

5-14-2010

Printcraft Press v. Sunnyside Park Utilities Clerk's Record v. 8 Dckt. 36556

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LAW CLERK

IN THE

volume 8

SUPREME COURT

OF THE

STATE OF IDAHO

PRINTCRAFT PRESS, INC.

Plaintiff and

Respondent/Cross Appellant

SUNNYSIDE PARK UTILITIES, INC., etal

Defendant and

Appellant/Cross Respondent

Appealed from the District Court of the Seventh Judicial

District of the State of Idaho, in and for Bonneville County

Hon. Joel E. Tingey, District Judge

Mark Fuller P.O. Box 50935, Idaho Falls, ID 83405

Brvan Smith P.O. Box 50731, Idaho Falls, ID 83405

Attorney's for Appellants-Cross Respondents

Michael Gaffney 2105 Coronado, Idaho Falls, ID 83404-7495

FILED - COPY

Attorney for Respondent-Cross Appellant

Filed this 10th day of 8 2010, 20

Signature of Clerk of Court

Clerk

By

Deputy

36556

COPY
36567

DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
COUNTY OF BONNEVILLE

8 NOV 19 AM 10:42

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS, INC., an Idaho
corporation, TRAVIS WATERS, an individual

Plaintiff,

vs.

SUNNYSIDE UTILITIES, INC., and Idaho
Corporation, SUNNYSIDE PARK OWNERS
ASSOCIATION, INC., and Idaho Corporation,
and SUNNYSIDE INDUSTRIAL AND
PROFESSIONAL PARK, LLC, and Idaho
limited liability corporation, DOYLE BECK, an
individual, and KIRK WOOLF, an individual,

Defendants, Counterclaimants.

Case No. CV-06-7097

ORDER

THIS MATTER comes before the Court upon Plaintiff's Motion to Compel and Defendants Beck and Woolf's motion for a protective order, and the Court having reviewed the record, and heard oral argument, and good cause appearing therefore;

IT IS HEREBY ORDERED that Plaintiff's motion to compel is granted in part and denied in part. At the time of the hearing Plaintiff's counsel withdrew the motion as to Plaintiff's interrogatories numbers 4 and 5. In any event, Defendant's objections to said interrogatories are sustained. Defendants are however required to produce the financial information which has been requested by Plaintiff and falls within the scope of discoverable information as set out in the Court's prior protective order.

IT IS FURTHER ORDERED that Defendants' current motion for a protective order is denied.

Dated this 19 day of November, 2008.


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 19 day of November, 2008, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Mark R. Fuller
Daniel R. Beck
FULLER & CARR
PO Box 50935
Idaho Falls, ID 83405-9035

Michael D. Gaffney
Lance J. Shuster
Beard St. Clair Gaffney
2105 Coronado St.
Idaho Falls, ID 83404-7495

Bryan D. Smith
McGrath, Smith & Associates
P.O. Box 50731
414 Shoup Avenue
Idaho Falls, ID 83405

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By 
Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS, INC., an)	
Idaho corporation,)	
)	
Plaintiff,)	
)	
vs.)	MINUTE ENTRY
)	Case No. CV-06-7097
)	
SUNNYSIDE UTILITIES, INC., an)	
Idaho corporation,)	
)	
Defendant.)	
)	

On the 19th day of November, 2008, Defendant's motion for protective order and Plaintiff's motion to compel came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Michael Gaffney appeared on behalf of the Plaintiff.

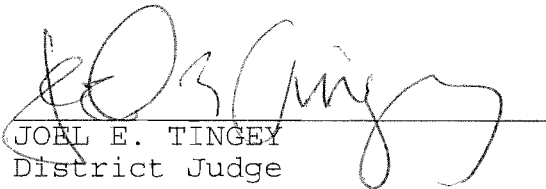
No one appeared on behalf of the Defendant Sunnyside Utilities.

Mr. Bryan Smith appeared on behalf of Defendant Doyle Beck and Kirk Woolf.

Mr. Gaffney presented Plaintiff's motion to compel discovery. Requests 4 and 5 were withdrawn. Mr. Smith responded regarding the motion to compel and presented Defendant's motion for protective order. Mr. Gaffney argued in opposition to the motion for protective order.

The Court granted the motion to compel as to financial records. The Court will require disclosure of financial records now and finds the twelve month time period appropriate.

Court was thus adjourned.


JOEL E. TINGEY
District Judge

H:cv067097.47mo

CERTIFICATE OF SERVICE

I hereby certify that on the 19 day of November, 2008, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE



Deputy Court Clerk

Jeff Brunson
2105 Coronado Street
Idaho Falls, ID 83404-7495

Mark R. Fuller
Dan Beck
PO Box 50935
Idaho Falls, ID 83405

Bryan Smith
PO Box 50731
Idaho Falls, ID 83405

MARK R. FULLER (ISB No. 2698)
DANIEL R. BECK (ISB No. 7237)
FULLER & CARR
410 MEMORIAL DRIVE, SUITE 201
P.O. Box 50935
IDAHO FALLS, ID 83405-0935
TELEPHONE: (208) 524-5400

BONNEVILLE COUNTY
IDAHO
2007 DEC -8 PM 1:57

ATTORNEY FOR DEFENDANT/COUNTER CLAIMANT SUNNYSIDE PARK UTILITIES, INC. AND
SUNNYSIDE INDUSTRIAL AND PROFESSIONAL PARK, LLC.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF BONNEVILLE**

PRINCRAFT PRESS, INC., an)
Idaho corporation,)

Plaintiff,)

v.)

SUNNYSIDE PARK UTILITIES,)
INC., an Idaho corporation,)
SUNNYSIDE PARK OWNERS)
ASSOCIATION, INC., an Idaho)
corporation, SUNNYSIDE)
INDUSTRIAL AND PROFESSIONAL)
PARK, LLC, an Idaho limited)
liability corporation, DOYLE)
BECK, an individual, and KIRK)
WOOLF, an individual.)

Defendants.)

SUNNYSIDE PARK UTILITIES,)
INC., an Idaho corporation,)
and SUNNYSIDE INDUSTRIAL AND)
PROFESSIONAL PARK, LLC, an)
Idaho limited liability)
corporation.)

Counterclaimants,)

v.)

PRINCRAFT PRESS, INC., an)
Idaho corporation, and TRAVIS)
WATERS, an individual.)

Counter-defendants.)

Case No. CV-06-7097

AFFIDAVIT OF DANIEL R. BECK
IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT RE:
DAMAGES

AFFIDAVIT OF DANIEL R. BECK - 1

STATE OF IDAHO)
) ss.
County of Bonneville)

Daniel R. Beck, being first duly sworn upon his oath states and alleges as follows:

1. Affiant is a resident of Bonneville County, State of Idaho and executes this Affidavit upon his personal knowledge.

2. Affiant is an attorney representing the Defendants Sunnyside Park Utilities, Inc. and Sunnyside Industrial and Professional Park, LLC, in this matter.

3. Attached hereto as Exhibit A is a true and correct copy of excerpts of Plaintiff's Responses to Defendant's First and Second Sets of Interrogatories. Specifically the excerpts contain Responses to Interrogatory No. 15 and Interrogatory No. 33.

4. Attached hereto as Exhibit B is a true and correct copy of excerpts of the Updated Disclosure of Expert Witness Opinions David M. Smith CPA/ABV/CFF, CVA, CMEA, CFFA, specifically, pgs. 10-11.

5. Further this Affiant sayeth naught.

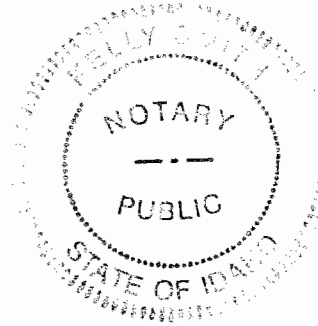
DATED this 5th day of December, 2008.



Daniel R. Beck
Attorney-Sunnyside Park Utilities, Inc.

SUBSCRIBED AND SWORN to before me this 5th day of December,
2008.

Kelly Smith
Notary Public for Idaho
Residing at: Rexburg
My Commission Expires: 06-28-2011



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the attorneys listed below on this 9th day of December, 2008:

Document Served:

AFFIDAVIT OF DANIEL R. BECK

Attorneys Served:

Michael D. Gaffney, Esq.
BEARD ST. CLAIR
2105 Coronado Street
Idaho Falls, ID 83404

 X U.S. Mail
 Facsimile
 Hand Delivery

Bryan Smith
SMITH, DRISCOLL & ASSOCIATES
P.O. Box 50731
Idaho Falls, ID 83405-0731
Fax: 529-4166

 X U.S. Mail
 Facsimile
 Hand Delivery

DRB

Daniel R. Beck
FULLER & CARR

Michael D. Gaffney, ISB No. 3558
Lance J. Schuster, ISB No. 5404
Jeffrey D. Brunson, ISB No. 6996
John M. Avondet, ISB No. 7438
BEARD ST. CLAIR GAFFNEY PA
2105 Coronado Street
Idaho Falls, Idaho 83404-7495
Telephone: (208) 523-5171
Facsimile: (208) 529-9732

Attorney for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation,

Plaintiff,

vs.

SUNNYSIDE UTILITIES, INC., an Idaho
corporation

Defendant.

Case No.: CV-06-7097

PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST AND SECOND
SETS OF INTERROGATORIES,
REQUESTS FOR PRODUCTION AND
REQUESTS FOR ADMISSION

Plaintiff, Printcraft Press, Inc., by and through counsel of record, hereby responds to Defendant's First and Second Sets of Interrogatories, Requests for Production and Requests for Admission as follows. As a preliminary matter the plaintiff objects on the basis that this is not the first and second sets of discovery. As the defendants all have retained the same counsel they should not be permitted to each submit separate discovery requests asking at times identical questions. Such discovery is abusive to the plaintiff

Interrogatory No. 11.

OBJECTION: This request calls for a legal conclusion and information protected by the work product doctrine. This interrogatory clearly seeks legal analysis and not discoverable facts. Without waiving the objection, the plaintiff responds as follows. Based upon the representation(s) that there was a sewer system, plaintiff purchased a new printing press, moved its operations into the new building, and began its printing operations. Please see previous discovery responses, summary judgment briefing, affidavits, depositions, and summary judgment decision.

INTERROGATORY NO. 14: Please describe in detail all damages you allege Printcraft suffered prior to occupancy of the building on Block 1, Lot 5 as a result of any alleged non-disclosure by SIPP.

RESPONSE: Plaintiff incurred damages associated with closing its old facility and moving its operation to a new facility. These expenses associated with closing the old facility, moving, and installing equipment prior to occupancy total \$130,000. Please see previous discovery responses, summary judgment briefing, affidavits, depositions, and summary judgment decision. This response may be supplemented pursuant to the Idaho Rules of Civil Procedure.

INTERROGATORY NO. 15: Please describe in detail all damages you allege Printcraft suffered in occupying the building on Block 1, Lot 5 as a result of any alleged non-disclosure by SIPP.

RESPONSE: Plaintiff suffered approximately \$130,000 in damages as a result of moving into the building, approximately \$1,080,000 in damages for rent that will be owed to CTR Management, LLC over the course of ten years, and the cost and expenses

of removing sewage from the property weekly. The plaintiff is paying \$1,000 per week to have sewage removed from the property, and will continue to incur this expense during the duration of the lease. Plaintiff has already paid close to \$40,000 to deal with the sewage issue. Also, plaintiff has incurred attorney fees and costs related to prosecution of this action for which it seeks recovery. In addition, plaintiff has been unable to increase sales with the uncertainty involved with its use of the sewer system. Plaintiff has historically grown 10% per year, but has not had grown since this matter began in June of 2006. Plaintiff has also lost production in the approximate amount of \$40,000 since this matter began due to loss of the use of the sewer system. Please see previous discovery responses, summary judgment briefing, affidavits, depositions, and summary judgment decision. This response may be supplemented pursuant to the Idaho Rules of Civil Procedure.

INTERROGATORY NO. 16: Please describe in detail, all damages you allege Printcraft suffered after occupancy of the building in January of 2006 through June 9, 2006, as a result of any alleged non-disclosure by SIPP.

RESPONSE: See response to Interrogatory No. 15.

INTERROGATORY NO. 17: Please describe in detail, all damages you allege Printcraft suffered from June 9, 2006 through September 26, 2006 as a result of any alleged non-disclosures by SIPP.

RESPONSE: The growth and expansion of plaintiff was put on hold as a result of the limitations imposed on plaintiff's use of the sewer system. Plaintiff's projected growth is 10% per year on \$4,000,000 per year in sales and growth of the business has been halted as a result of the inadequate sewer system. Plaintiff has also lost production.

INTERROGATORY NO. 31: Please describe in detail, how Printcraft relied on any alleged non-disclosure to enter into each contract(s) identified in response to Interrogatory No. 30.

OBJECTION: This request calls for a legal conclusion and information protected by the work product doctrine. This interrogatory clearly seeks legal analysis and not discoverable facts. Without waiving the objection, the plaintiff responds as follows. Based upon the representation(s) that there was a sewer system, plaintiff purchased a new printing press, moved its operations into the new building, and began its printing operations. Please see previous discovery responses, summary judgment briefing, affidavits, depositions, and summary judgment decision.

INTERROGATORY NO. 32: Please describe in detail all damages you allege Printcraft suffered prior to occupancy of the building on Block 1, Lot 5 as a result of any alleged non-disclosure by Sunnyside Park Utilities.

RESPONSE: Plaintiff incurred damages associated with closing its old facility and moving its operation to a new facility. These expenses associated with closing the old facility, moving, and installing equipment prior to occupancy total \$130,000. Please see previous discovery responses, summary judgment briefing, affidavits, depositions, and summary judgment decision. This response may be supplemented pursuant to the Idaho Rules of Civil Procedure.

INTERROGATORY NO. 33: Please describe in detail all damages you allege Printcraft suffered in occupying the building on Block 1, Lot 5 as a result of any alleged non-disclosure by Sunnyside Park Utilities.

RESPONSE: Plaintiff suffered approximately \$130,000 in damages as a result of

moving into the building, approximately \$1,080,000 in damages for rent that will be owed to CTR Management, LLC over the course of ten years, and the cost and expenses of removing sewage from the property weekly. The plaintiff is paying \$1,000 per week to have sewage removed from the property, and will continue to incur this expense during the duration of the lease. Plaintiff has already paid close to \$40,000 to deal with the sewage issue. Also, plaintiff has incurred attorney fees and costs related to prosecution of this action for which it seeks recovery. In addition, plaintiff has been unable to increase sales with the uncertainty involved with its use of the sewer system. Plaintiff has historically grown 10% per year, but has not had grown since this matter began in June of 2006. Plaintiff has also lost production in the approximate amount of \$40,000 since this matter began due to loss of the use of the sewer system. Please see previous discovery responses, summary judgment briefing, affidavits, depositions, and summary judgment decision. This response may be supplemented pursuant to the Idaho Rules of Civil Procedure.

INTERROGATORY NO. 34: Please describe in detail, all damages you allege Printcraft suffered after occupancy of the building in January of 2006 through June 9, 2006 as a result of any alleged non-disclosure by Sunnyside Park Utilities.

RESPONSE: See response to Interrogatory No. 33.

INTERROGATORY NO. 35: Please describe in detail, all damages you allege Printcraft suffered from June 9, 2006 through September 26, 2006 as a result of any alleged non-disclosures by Sunnyside Park Utilities.

RESPONSE: The growth and expansion of plaintiff was put on hold as a result of the limitations imposed on plaintiff's use of the sewer system. Plaintiff's projected

David M. Smith
Idaho State Accountancy Board #1345
SMITH AND COMPANY CPAs, PLLC
310 Elm Street
Idaho Falls, ID 83402
Telephone: (208) 524-2601
Facsimile: (208) 522-0502

Expert Witness for the Plaintiff, Printcraft Press, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS INC., an Idaho)
Corporation,)
)
Plaintiff,)
)
vs.)
)
SUNNYSIDE PARK UTILITIES, INC. an)
Idaho Corporation, SUNNYSIDE PARK)
OWNERS ASSOCIATION, an Idaho)
corporation, and SUNNYSIDE)
INDUSTRIAL AND PROFESSIONAL)
PARK LLC, an Idaho limited liability)
corporation,)
)
Defendants.)
)

CASE NO. CV-06-7097

**Updated Disclosure of
Expert Witness Opinions
David M. Smith CPA/ABV/CFF, CVA,
CMEA, CFFA**

Opinion #1 – DAMAGES SUFFERED IF PRINTCRAFT PRESS, INC. CONNECTS TO THE CITY OF IDAHO FALLS.

Printcraft suffered loss (damages) due to the alleged actions of the Defendant in an amount between \$237,323.19 and 314,474.54 (including interest). This amount represents the expected cost to connect to the City of Idaho Falls utilities and reimburse the costs incurred.

Basis for Opinion

The building in which Printcraft Press, Inc. operates is contiguous to the boundary of the City of Idaho Falls. Therefore, an annexation of the property can occur and a connection made if an easement to the City Utilities can be found.

The elements of damages are:

1. Estimated cost of construction to connect to the existing City system is from \$85,757.51 to \$162,908.86 plus accrued interest of \$1,493.10.

The Plaintiff has researched and documented the construction estimated costs of attaching to the City of Idaho Falls sewer. As of the date of this report, additional information is necessary. The estimated cost depends upon the route of the sewer connection. Four options are being considered:

• Connect by lift station using Doyle Beck's pipe	\$235,952.45
• Connect to Sunnyside (road) through Miskin's property	\$ 85,757.51
• Connect to Yellowstone using lift pressure line	\$133,633.17
• Connect to Jameston line	\$162,908.86

These estimates have been assembled by Lawry Wilde, a partner in the CTR landlord company. The estimated construction time may allow this project to be complete by the trial date so that the actual cost of construction will be known rather than estimates.

Costs incurred to date have been \$26,410.39 for the construction of a lift station that each option requires. Interest accrued is an additional \$1,493.10.

The first option above contains estimates for the recertification of Mr. Beck's pipeline and the installation of additional pipe. Due to the estimates involved and the unknown cost of this option, it has been considered unfeasible by the Plaintiff.

2. Cost incurred for temporary sewage storage and transportation \$132,907.56.

As of the date of this report, November 24, 2008 the Plaintiff has incurred \$100,104.10 of out-of-pocket costs associated with the temporary storage and transfer of sewer waste. From now until the trial date, the Plaintiff will incur another \$19,000 in out-of-pocket costs for a total of \$119,104.10. These costs were determined by examining the invoices for expenses paid to store, transport, test, treat and dispose of sewage. With interest at 12% the costs incurred are \$132,907.56.

3. Cost incurred obtaining water. \$17,165.02.

The cost of drilling a well for company water was \$14,873.71. This is based on the actual cost to drill the well by Independent Drilling Inc. These costs were determined by examining the invoices for expenses paid by the Plaintiff to drill a new well. With interest from November/December 2007, until trial of \$2,291.31 for a total of \$17,165.02.

4. Reduced profit from lost employee time – Unknown, Withdrawn.

Opinion #2 – DAMAGES SUFFERED IF PRINTCRAFT PRESS, INC. RELOCATES - Withdrawn

Opinion #3 – DAMAGES SUFFERED IN LOSS OF VALUE OF PREMISES - Withdrawn

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

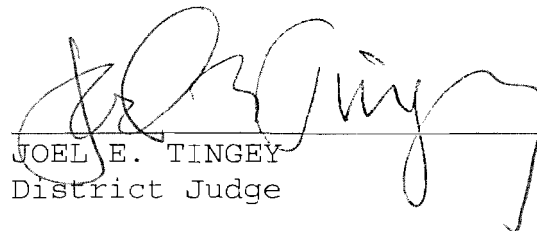
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PRINCRAFT PRESS, INC., an)	
Idaho corporation,)	
)	
Plaintiff,)	
)	ORDER
vs.)	Case No. CV-06-7097
)	
SUNNYSIDE UTILITIES, INC., an)	
Idaho corporation,)	
)	
Defendant.)	
_____)	

THIS MATTER has come before the Court upon Plaintiffs' Motion to Quash Subpoenas, and the Court having reviewed the record and heard oral argument, and good cause appearing therefore;

IT IS HEREBY ORDERED that Plaintiff's Motion is Denied in part and Granted in part. Specifically, Defendants may depose Lance Schuster and Robert Starr as to the circumstances of the alleged trespass as set out in Defendant's counterclaim. Defendants may proceed with its Rule 30(b)(6) deposition of Plaintiff, however, the deposition as conducted by defendants (including Woolf and Beck individually) will be limited to six hours, not including breaks. Defendants may proceed with the second deposition of Travis Waters, however, the deposition as

conducted by defendants (including Woolf and Beck individually) will be limited to four hours, not including breaks.



JOEL E. TINGEY
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 19 day of December, 2008, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE

ms
Deputy Court Clerk

Michael Gaffney
Jeff Brunson
John Avondet
2105 Coronado Street
Idaho Falls, ID 83404-7495

Mark R. Fuller
Dan Beck
PO Box 50935
Idaho Falls, ID 83405

Bryan Smith
PO Box 50731
Idaho Falls, ID 83405

DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO

8 DEC 18 A7:37

Michael D. Gaffney, ISB No. 3558
Lance J. Schuster, ISB No. 5404
Jeffrey D. Brunson, ISB No. 6996
John M. Avondet, ISB No. 7438
BEARD ST. CLAIR GAFFNEY PA
2105 Coronado Street
Idaho Falls, Idaho 83404-7495
Telephone: (208) 523-5171
Facsimile: (208) 529-9732

Attorney for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation, TRAVIS WATERS, an
individual,

Plaintiff/Counterdefendant,

vs.

SUNNYSIDE PARK UTILITIES, INC., an
Idaho corporation, SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an
Idaho corporation, SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
and KIRK WOOLF, an individual,

Defendants/Counterclaimants.

Case No.: CV-06-7097

ORDER SHORTENING TIME

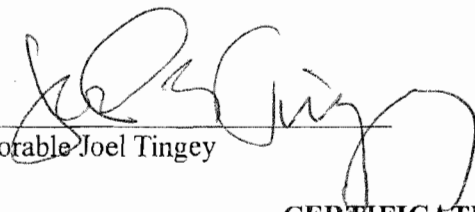
DEC 17 2008

This matter having come before the Court by means of the Plaintiffs' *Motion to Shorten Time*, and good cause having been shown,

IT IS HEREBY ORDERED that the time for hearing *Plaintiffs' Motion to Quash Amended 30(b)(6) Subpoena Duces Tecum Printcraft Press, Lance Schuster, Travis*

Waters and Deposition of Robert Starr be shortened to Friday, December 19, 2008 at
9:00 a.m.

DATED: December 18 2008.


Honorable Joel Tingey

CERTIFICATE OF SERVICE

I certify that on December 19, 2008, I served a true and correct copy of the
ORDER SHORTENING TIME on the following by the method of delivery designated
below:

Mark Fuller
Fuller & Carr
PO Box 50935
Idaho Falls, ID 83405-0935
Fax: (208) 524-7167

☐ U.S. Mail ☒ Courthouse Box ☐ Facsimile

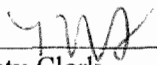
Bryan D. Smith
Smith, Driscoll & Associates
PO Box 50731
Idaho Falls, ID 83405-0731
Fax: (208) 529-4166

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Michael D. Gaffney
Beard St. Clair Gaffney PA
2105 Coronado Street
Idaho Falls, ID 83404
Fax: (208) 529-9732

☐ U.S. Mail ☒ Courthouse Box ☐ Facsimile

Clerk of the Court

By: 
Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS, INC., an)	
Idaho corporation,)	
)	
Plaintiff,)	
)	MINUTE ENTRY
vs.)	Case No. CV-06-7097
)	
SUNNYSIDE UTILITIES, INC., an)	
Idaho corporation,)	
)	
Defendant.)	
)	

On the 19th day of December, 2008, Plaintiff's motion to quash subpoenas came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. John Avondet appeared on behalf of the Plaintiff.

Mr. Dan Beck appeared on behalf of the Defendant Sunnyside Utilities.

Mr. Bryan Smith appeared on behalf of Defendant Doyle Beck and Kirk Woolf.

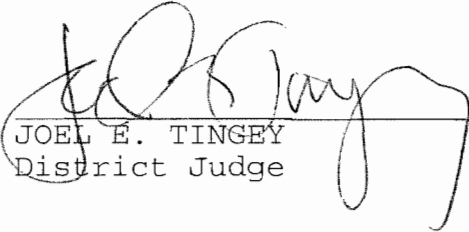
Mr. Avondet presented Plaintiff's motion to quash subpoenas.

Mr. Beck presented argument in opposition to the motion to quash. Mr. Smith presented argument in opposition to the motion. Mr. Avondet presented rebuttal argument.

The Court will deny the motion. He will treat the motion as a protective order and limit deposition time for the corporation

to 6 hours and deposition time for Mr. Waters to 4 hours.

Court was thus adjourned.


JOEL E. TINGEY
District Judge

H:cv067097.51mo

CERTIFICATE OF SERVICE

I hereby certify that on the 19 day of December, 2008, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE

ms
Deputy Court Clerk

Michael Gaffney
Jeff Brunson
John Avondet
2105 Coronado Street
Idaho Falls, ID 83404-7495

Mark R. Fuller
Dan Beck
PO Box 50935
Idaho Falls, ID 83405

Bryan Smith
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Idaho Falls, ID 83405

BONNEVILLE COUNTY
IDAHO

2006 FEB 23 PM 4:55

Michael D. Gaffney, ISB No. 3558
Jeffrey D. Brunson, ISB No. 6996
BEARD ST. CLAIR GAFFNEY PA
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Email: gaffney@beardstclair.com
jeff@beardstclair.com

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation, TRAVIS WATERS, an
individual,

Plaintiff/Counterdefendant,

vs.

SUNNYSIDE PARK UTILITIES, INC., an
Idaho corporation, SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an
Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOLF, an individual,

Defendants/Counterclaimants.

Case No.: CV-06-7097

AFFIDAVIT OF COUNSEL

STATE OF IDAHO)
) ss.
COUNTY OF BONNEVILLE)

I, John M. Avondet, having first been sworn, depose and state:

1. I am over the age of eighteen, am competent to testify, and do so from
personal knowledge.

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Affidavit of Counsel Page 1

2. I am an attorney at Beard St. Clair Gaffney PA, counsel of record for Printcraft Press, Inc.


3. Attached as Exhibit A is a copy of the deposition transcript of the David M. Smith's deposition, including a copy of Mr. Smith's report.

4. Attached as Exhibit B is a copy of excerpts from the deposition of Kellye Eager, taken on December 7, 2007.

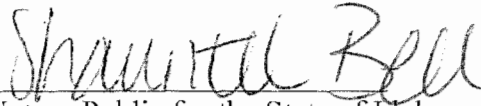
5. Attached as Exhibit C is a copy of excerpts from the deposition of Doyle Beck, taken on December 3, 2008.

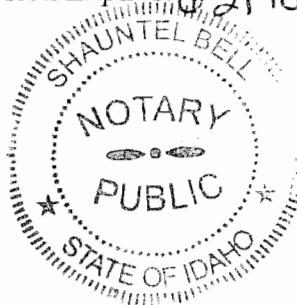
6. Attached as Exhibit D is a copy of excerpts from the deposition transcript of Travis Waters, taken on December 22, 2008.

DATED: December 23, 2008


John M. Avondet

Subscribed and sworn to me on this 23rd day of December, 2008.


Notary Public for the State of Idaho
Residing at: Rexburg ID
My Commission Expires: 6-21-10
SEAL



CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on December 23, 2008,

I served a true and correct copy of the Affidavit of Counsel on the following by the
method of delivery designated below:

Mark Fuller
Fuller & Carr
PO Box 50935
Idaho Falls, ID 83405-0935
Fax: (208) 524-7167

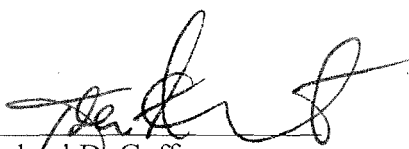
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Bryan Smith
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Bonneville County Courthouse
605 N. Capital Avenue
Idaho Falls, ID 83402
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☐ U.S. Mail ☒ Hand-delivered ☐ Facsimile


Michael D. Gaffney
Jeffrey D. Brunson
Of Beard St. Clair Gaffney PA
Attorneys for the Plaintiff

DAVID M. SMITH'S
DEPOSITION
IN PREPARATION

EXHIBIT A

1 absolutely say you don't know.

2 MR. BRUNSON: It was probably a poor
3 question.

4 MR. CROCKETT: You don't have to guess. If
5 you don't know, say I don't know.

6 THE WITNESS: I don't know as the question
7 was asked.

8 Q. BY MR. BRUNSON: As to what goes into a
9 sewer system, potentially, there's more product that
10 could be -- more variety of product, when I say that,
11 I mean, as you classified break room, I'm trying to
12 remember -- you gave a whole list. There was break
13 room; there was waste as a result of industrial
14 process?

15 A. Uh-huh.

16 Q. Generally, again, based on your
17 experience, there was more probability in having a
18 higher volume of waste when you compare residence to
19 an industrial situation?

20 MR. FULLER: Object as to form.

21 THE WITNESS: I would say yes.

22 Q. BY MR. BRUNSON: Again, referring to
23 Exhibit *-003 and your site visit on, I believe it
24 was June 28th of 2006, when you were describing what
25 you viewed, I believe you testified that you were

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1 surprised at the vast amount of product; is that
2 correct?

3 A. Yes.

4 Q. Why were you surprised?

5 A. Just from the experience I've had with
6 household residences of a single dwelling, the
7 product is, you know, less in volume. With the
8 commercial facility here and seeing the amount of
9 product on the ground, I was just overtaken by the
10 amount of product being exposed to the environment
11 and the potential health risk at hand.

12 Q. Based on what you observed, did you make
13 a determination that there was a capacity problem?

14 MR. FULLER: Object as to form.

15 THE WITNESS: At that point, I was just
16 verifying the sewage on the ground. Speculation of
17 such was made, but my immediate concern was taking
18 care of the sewage on the ground.

19 Q. BY MR. BRUNSON: Let me ask you this:

20 Based on your knowledge of District Seven's
21 involvement and your own involvement, and I
22 understand District Seven's involvement goes back
23 quite some time in your review of the file and all
24 your knowledge regarding the situation, do you have
25 an opinion as to whether the existing sewer system at

T&T REPORTING - (208) 529-5491

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1 Sunnyside has a capacity problem?

2 MR. FULLER: Object as to form.

3 THE WITNESS: I do agree there is a capacity
4 issue.

5 Q. BY MR. BRUNSON: What is that?

6 A. We have 11 connections to a system that
7 was originally permitted for two, and we only have
8 half of the development at present.

9 Q. Based on your knowledge of IDAPA and
10 other laws, has the existing system at Sunnyside
11 violated IDAPA or any other regulations?

12 MR. FULLER: Object as to form.

13 THE WITNESS: Yes.

14 Q. BY MR. BRUNSON: Why?

15 A. It's in a pit. It could be flooded if
16 there was a major snow melt, because the water could
17 potentially drain directly into the pit. The tanks
18 in series requirements do not meet the IDAPA
19 requirements for the said volume of the tanks as
20 placed in series. The tanks were installed without
21 inspection, and there were noted deficiencies to what
22 was installed to that temporary system.

23 Q. Anything else?

24 A. Again, process flows were not taken into
25 consideration with the temporary expansion. And

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1 again, future build-out has not even been taken into
2 account.

3 Q. Anything else you can think of?

4 A. I think that is it.

5 Q. Let me ask a few follow-ups on that.

6 Can you identify the IDAPA provisions that Sunnyside
7 is in violation of?

8 A. I don't have the regulations to look
9 those up. I couldn't cite them accurately.

10 Q. Based on your testimony, the list that
11 you just gave me would constitute IDAPA violations;
12 you're just not sure on the specific citation?

13 A. Correct.

14 Q. Any other laws that they violated, other
15 than IDAPA?

16 A. Not that I can think of.

17 Q. Based on your knowledge of the file and
18 based on your knowledge of District Seven's
19 involvement and your own involvement, when were they
20 first in violation of IDAPA?

21 A. When they knew for the first time
22 that -- basically seeing the system failed, they
23 should have come in right then. I can't say as to
24 when that exact date was based on my inspection. But
25 upon seeing the sewage on the ground, it would have

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1 occurred then.

2 And with knowing that their original
3 permit was only for two connections, with the third
4 connection, they should have come in to get another
5 permit.

6 (Exhibit *-028 marked.)

7 Q. BY MR. BRUNSON: You've just been handed
8 what's been marked as Exhibit *-028 to your
9 deposition. Have you had a chance to look at that
10 document?

11 A. Yes.

12 Q. What is that document?

13 A. It's a septic permit issued in August of
14 '96.

15 Q. Is this something District Seven
16 originated?

17 A. Yes.

18 Q. Did you prepare this document?

19 A. No. Jed Finlinson did.

20 Q. Did you say Jed?

21 A. Jed.

22 Q. Is Jed still employed with District
23 Seven?

24 A. No.

25 Q. Did you know him? Do you know him?

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1 A. I did know him where he was still an
2 employee, yes.

3 Q. Have you reviewed this document previous
4 to today?

5 A. Yes.

6 Q. What is the purpose of this document?

7 A. To allow installation of a septic
8 system, septic tank and drain field up to 300 gallons
9 per day maximum.

10 Q. Who was this issued to?

11 A. Sunnyside Industrial Park.

12 Q. Was this necessary for them to develop
13 the industrial park?

14 A. This was for the sewage for one to two
15 buildings.

16 Q. Are you aware of any other permits that
17 were issued by District Seven to Sunnyside for a
18 septic tank?

19 A. The only other permit was the temporary
20 emergency expansion that we've discussed earlier
21 today.

22 Q. I see an expiration date on this
23 document towards the top. It says it expires August
24 15th of 1997. What does that mean?

25 A. It gives the permit validity for one

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1 year.

2 Q. Is this a temporary permit, then?

3 A. It's a permit to allow the construction
4 and installation up to a year.

5 Q. What are they supposed to do after a
6 year is my question?

7 A. If they do not install the system within
8 that time frame, they can pay a renewal fee to exten
9 it for another year.

10 Q. Do you know if that happened in this
11 case?

12 A. It did not.

13 Q. Again, it says expires August 15th,
14 1997. When the permit expired, was their continued
15 use of the septic system in violation of any law?

16 MR. FULLER: Object as to form.

17 THE WITNESS: I can't answer that.

18 Q. BY MR. BRUNSON: Did you not understand
19 my question?

20 A. I can't answer the question as asked.

21 Q. If you know, what is the consequence of
22 not renewing the septic permit that we're talking
23 about here in Exhibit *-028?

24 A. As long as the system was installed,
25 there is no consequence. If they choose to install

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1 it after the permit is expired, then they no longer
2 have a valid permit; therefore, we would have to go
3 after the potential system for not having a valid
4 permit.

5 Q. So this just gives them a year to get
6 the thing installed?

7 A. Correct.

8 Q. To your knowledge, was it installed
9 within the year?

10 A. Yes.

11 Q. I believe earlier you alluded to the
12 fact that one other violation of IDAPA was that they
13 added an additional building to this septic system;
14 is that correct?

15 A. They've added multiple buildings to the
16 system beyond this permit.

17 Q. Let me ask you this: It says 300
18 gallons per day, one or two buildings. When a third
19 building was connected to the septic system, in your
20 opinion, was that a violation of IDAPA?

21 A. Yes.

22 Q. You previously testified that one of
23 your roles with District Seven was enforcement. Let
24 me ask you this: Was District Seven aware that a
25 third unit had been connected, or when a third unit

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1 was connected to the septic system?

2 **A. No.**

3 **Q.** What would District Seven have done if
4 they would have been aware?

5 **A. We would have notified the industrial**
6 **park, given them time to come in to fill out an**
7 **application and work with us. And if that would not**
8 **have been done, we would have escalated our**
9 **enforcement actions.**

10 **Q.** What possible enforcement actions could
11 have been taken?

12 **A. That they may have suffered -- had**
13 **consequences of monetary fees and penalties, and**
14 **disapproval of the system that is there.**

15 **Q.** By connecting to a third building, did
16 that present a public health risk?

17 **A. I can't answer the way you asked that.**
18 **You need to restate that.**

19 **Q.** When Sunnyside Utility allowed a third
20 building to be connected to their septic system, did
21 that present a public health concern?

22 **A. Not at that time.**

23 **Q.** Maybe just so I understand your
24 testimony, it doesn't present a public health concern
25 until there's actually sewage above ground?

T&T REPORTING - (208) 529-5491 Page 149

1 **A. Correct.**

2 **Q.** Was there the potential for an overflow
3 when they connected to a third building?

4 **MR. FULLER:** Object as to form.

5 **THE WITNESS:** There was a potential with a
6 third building being connected onto the system.

7 **Q. BY MR. BRUNSON:** There's been a term,
8 and I don't know if you used it today, of design
9 flow. Are you familiar with that term?

10 **A. Uh-huh.**

11 **Q.** What does that mean?

12 **A. What the system is going to be designed**
13 **as, or what it's going to be, needs to be speculated**
14 **with gallons and flows assigned to that and the drain**
15 **field sized appropriately to those flows.**

16 **Q.** Is that a term that's defined in IDAPA?

17 **A. I believe so.**

18 **Q.** Drawing your attention to Exhibit *-028
19 again toward the bottom where it says special
20 conditions, note give pink copy to installer before
21 work starts. In this instance, do you know who that
22 would have been?

23 **A. I don't know who the immediate installer**
24 **was for Sunnyside Industrial Park.**

25 **Q.** Would a copy of this have been given to

T&T REPORTING - (208) 529-5491 Page 150

1 Sunnyside Industrial Park?

2 **A. The person that signed off would have**
3 **been a representative, and they would have received**
4 **the permit copy, yes.**

5 **Q.** Is this a copy of this document we're
6 looking at, Exhibit *-028?

7 **A. Right.**

8 **Q.** It says, applicant/agent signature. Do
9 you recognize that signature?

10 **A. I do not.**

11 **Q.** Do you know who signed this?

12 **A. I do not.**

13 **Q.** Was that someone that signed on behalf
14 of Sunnyside Industrial?

15 **A. Correct.**

16 **Q.** Then Jed Finlinson signed on behalf of
17 District Seven?

18 **A. Correct.**

19 (Exhibit *-029 marked.)

20 **Q. BY MR. BRUNSON:** You've just been handed
21 what's been marked in your deposition as

22 Exhibit *-029. I'll give you a chance to look at

23 that and review it. There's two pages. I'll just

24 represent to you the way this was copied, page 2 was

25 the back side of page 1. Do you recognize this

T&T REPORTING - (208) 529-5491 Page 151

1 document?

2 **A. It's a sewer application or septic**
3 **application, yes.**

4 **Q.** What is it?

5 **A. It's the application made to start**
6 **through the permit process to install a septic**
7 **system.**

8 **Q.** Do you recognize the signature at the
9 bottom?

10 **A. Yes, Kirk Woolf.**

11 **Q.** Then it says, licensed septic installer
12 Kelly Clay?

13 **A. Uh-huh.**

14 **Q.** Based on your view of Exhibit *-029 and
15 Exhibit *-028, can we determine that Kelly Clay was
16 the installer?

17 **A. No.**

18 **Q.** Why not?

19 **A. His name is not referenced on the septic**
20 **permit.**

21 **Q.** It's possible they could have changed
22 installers between the time they filled out the
23 application and actually installed the septic system?

24 **A. Yes.**

25 **Q.** Who fills out sewer applications such as

T&T REPORTING - (208) 529-5491 Page 152

PRINTCRAFT PRESS, INC., an Idaho)
corporation, TRAVIS WATERS, an)
individual,) Case No.
Plaintiffs/Counterdefendants,) CV-06-7097
vs.)

Idaho Falls, Idaho



T&T REPORTING

CERTIFIED SHORTHAND REPORTERS

COPY

REPORTED BY:

Sandra D. Terrill,
RPR, CSR

PREPARED FOR:

MR. GAFFNEY

Post 4

IDAHO F.

208.529.5491 • FAX 208.529.5496

EXHIBIT

Contributors

C

1283

DEPOSITION OF DOYLE BECK - 12/03/08

SHEET 6 PAGE 21

1 A. It was owned by myself.
 2 Q. Who owns it now?
 3 A. It's owned by Phenix Construction
 4 Company.
 5 Q. So in a conference room at a building
 6 owned by you, currently owned by Phenix, you had
 7 this CCR drawing interview you believe in April of
 8 2005?
 9 A. Yes.
 10 Q. Who else was at that meeting?
 11 A. No one.
 12 Q. What was the purpose of this CCR
 13 drawing interview meeting?
 14 A. Travis had called and made an
 15 appointment to come over and drop off his drawings
 16 and plot plan that he intended to build in
 17 Sunnyside Industrial Park, and he wanted approval
 18 of those drawings.
 19 Q. Now, when you use the term CC&R, what
 20 does that term mean?
 21 A. Covenants for the property.
 22 Q. I'm going to show you what was
 23 previously marked, I believe, Deposition Exhibit
 24 *-034 to this deposition that we talked about that
 25 was taken back in '07. And when you're talking

PAGE 23

1 have existed for Sunnyside Industrial and
 2 Professional Park from its inception until today?
 3 A. I don't.
 4 Q. Exhibit *-034, which I just showed
 5 you, are these the ones current?
 6 A. I don't know.
 7 Q. Who would know the answer to the last
 8 couple of questions I just asked you?
 9 A. Mr. Fuller or Mr. Woolf maybe.
 10 Q. Well, Mr. Woolf, I believe, has
 11 already been deposed.
 12 Now, during this meeting that you had
 13 with Mr. Travis in April of '05 relating to the
 14 CC&R drawing interview, did you give or do you
 15 recall giving Mr. Waters a copy of any CC&Rs for
 16 Sunnyside Industrial Park?
 17 A. No.
 18 Q. Does that mean you don't recall or you
 19 didn't give him any?
 20 A. I don't recall giving him any.
 21 Q. Do you recall discussing the CCRs with
 22 Mr. Waters at this meeting?
 23 A. Well, that was the main purpose of him
 24 coming over was to obtain our approval of his
 25 drawings because of the CC&Rs.

PAGE 22

1 about the CCRs that you're referencing on page 105
 2 of this deposition, is that what you're talking
 3 about is Exhibit No. *-034?
 4 A. No. I don't think so.
 5 Q. Are there other CCRs related to
 6 Sunnyside Industrial and Professional Park?
 7 A. Yes.
 8 Q. This says second amended declaration.
 9 Which iteration or version of the CCRs were you
 10 referring to in your previous deposition?
 11 A. I think the first.
 12 Q. I assume at some point, and maybe I'm
 13 wrong, but are they recorded with Bonneville
 14 County?
 15 A. I don't know.
 16 Q. Do you know if you have a copy of
 17 those first CCRs somewhere?
 18 A. Probably.
 19 Q. Do you know to what extent the first
 20 CCRs differ from the second amended CCRs that I
 21 just showed you? 108?
 22 A. Not without comparing them.
 23 Q. Now, this says second amended. There
 24 must have been an amended declaration too. Do you
 25 have any idea how many different versions of CCRs

PAGE 24

1 Q. So, basically, the purpose of this
 2 meeting, if I understand, was for you to review the
 3 drawings, look at the CCRs, whichever version
 4 existed at the time to see if the drawings comply;
 5 is that an accurate rendition?
 6 A. It was more along the lines to give
 7 them to me for review to see if they complied.
 8 Q. You said nobody else was present,
 9 right?
 10 A. That's correct.
 11 Q. I assume you took the drawings and at
 12 some point looked at them, right?
 13 A. No.
 14 Q. He brought them over for -- whose
 15 review did he bring them over for?
 16 A. The CC&R committee.
 17 Q. Who is on the CC&R committee?
 18 A. I think myself and Kirk Woolf.
 19 Q. Did the committee review the drawings?
 20 A. No.
 21 Q. Why not?
 22 A. Because they were incomplete,
 23 inaccurate, unprofessional. And I pointed this out
 24 to Travis, and he told me that he would correct it
 25 and get us some legitimate drawings.

TRAVIS WATERS'
DEPOSITION
IN PREPARATION

EXHIBIT D

BONNEVILLE COUNTY
IDAHO

2008 DEC 31 PM 4:41

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Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation, TRAVIS WATERS, an
individual,

Plaintiff/Counterdefendant,

vs.

SUNNYSIDE PARK UTILITIES, INC., an
Idaho corporation, SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an
Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOOLF, an individual,

Defendants/Counterclaimants.

Case No.: CV-06-7097

AFFIDAVIT OF COUNSEL

STATE OF IDAHO

ss.

County of Bonneville

I, Jeffrey D. Brunson, being first duly sworn, on oath, state:

1. I am competent to testify and do so from personal knowledge.

1389

2. I am an attorney with the firm Beard St. Clair Gaffney PA, counsel for the plaintiff in the above captioned suit.

3. Attached as Exhibit A are copies of excerpts from the Deposition of Doyle Beck dated May 30, 2007.

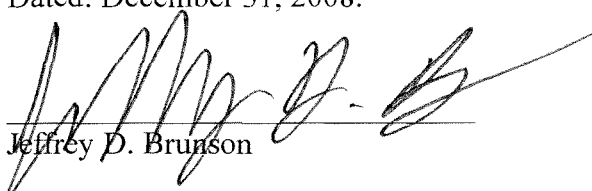
4. Attached as Exhibit B are copies of excerpts from the Deposition of Kellye Eager dated December 7, 2007.

5. Attached as Exhibit C are copies of excerpts from the Deposition of Kellye Eager dated April 23, 2008.

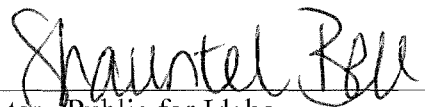
6. Attached as Exhibit D are copies of excerpts from the Deposition of Robert Starr dated October 21, 2008.

7. Attached as Exhibit E are copies of excerpts from the Deposition of Travis Waters dated April 25, 2007.

Dated: December 31, 2008.


Jeffrey D. Brunson

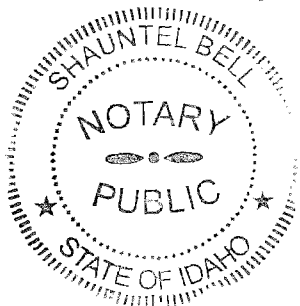
Subscribed and sworn to before me on December 31, 2008.


Notary Public for Idaho

Residing at: Rexburg ID

Commission expires: 6-2-10

SEAL



CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on December 31, 2008,

I served a true and correct copy of the Affidavit of Counsel on the following by the
method of delivery designated below:

Mark Fuller
Fuller & Carr
PO Box 50935
Idaho Falls, ID 83405-0935
Fax: (208) 524-7167

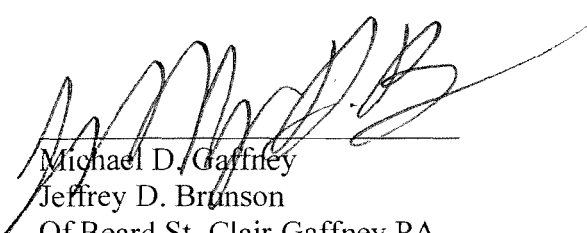
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605 N. Capital Avenue
Idaho Falls, ID 83402
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☐ U.S. Mail ☒ Hand-delivered ☐ Facsimile


Michael D. Gaffney
Jeffrey D. Brunson
Of Beard St. Clair Gaffney PA
Attorneys for the Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS, INC., an Idaho)
corporation,)

Plaintiff,)

vs.) Case No. CV-06-7097

SUNNYSIDE PARK UTILITIES, INC.,)

an Idaho corporation,)

Defendant.)

_____)

30(B)(6) DEPOSITION OF SUNNYSIDE PARK UTILITIES, INC.

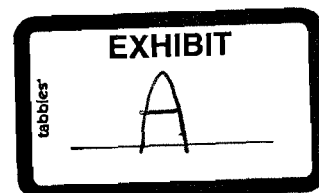
TESTIMONY OF DOYLE H. BECK

May 30, 2007

REPORTED BY:

DANIEL E. WILLIAMS, CSR No. 686, RPR

Notary Public.



1 lot 5?
 2 A. As far as I know.
 3 Q. Okay. All right. With regards to
 4 being a representative of Sunnyside, can you tell
 5 me what you understand CC&Rs are for?
 6 A. They're to say what's allowed and
 7 what's not allowed on the lot.
 8 Q. Okay. I think that's a pretty fair
 9 description.
 10 Does the Exhibit No. 34, which is the
 11 second amended declaration, does it contain those
 12 types of things; it says what you can and can't
 13 do on the lots?
 14 A. I think so.
 15 Q. Okay. Let me refer you to page 2, and
 16 I'm looking at Roman numeral paragraph III. I
 17 just want to make sure that I understand what
 18 some of these things mean that are said within
 19 paragraph III.
 20 And it appears to me to be just kind of
 21 a general statement of what the industrial park
 22 was created for. Would you agree with that?
 23 A. What's -- the paragraph starts out "The
 24 general purpose and use of the lots."
 25 Q. Right. And that's why I say it appears

1 to me to just kind of summarize what the
 2 industrial park was designed for.
 3 Just so I understand, it wasn't
 4 designed as a residential development; is that
 5 accurate?
 6 A. That's correct.
 7 Q. Okay. In fact, it says within this
 8 paragraph that it will be used -- that the lots
 9 will be used for commercial and industrial
 10 purposes. Do you see that?
 11 A. Yes.
 12 Q. And do you agree that that's the
 13 purpose of that industrial park?
 14 A. To use it for commercial and industrial
 15 purposes?
 16 Q. Uh-huh.
 17 A. Yeah.
 18 Q. Okay. Now, it gets a little more
 19 specific in the next sentence. It says that the
 20 lots will be used for a mixture of businesses,
 21 warehouses, craft shops, and manufacturing and
 22 industrial enterprises. What do you mean by --
 23 or what does Sunnyside mean by "manufacturing and
 24 industrial enterprises"?
 25 A. Well, ProWay Manufacturing & Repair was

1 a part of this, and we built crushers and hot
 2 plants and we fabricated equipment.
 3 Q. Okay.
 4 A. I mean, there's a variety of different
 5 things in the industrial park already with a
 6 manufacturing process.
 7 Q. Okay. So I understand that what's in
 8 there. I guess, what I want to understand is
 9 what was intended when it said manufacturing and
 10 industrial enterprises, and I think you've kind
 11 of answered that for me.
 12 It can be fabrication; it could be, you
 13 know, creation; it could be manufacturing; those
 14 kinds of things. Is that accurate?
 15 A. Yeah.
 16 Q. Okay. Down at the very bottom -- you
 17 know, again, it's hard for me to show you exactly
 18 where. It's in the sentence that begins "It is
 19 the intent," but it's down -- the last two lines
 20 is really what I'm looking at, I guess, where it
 21 says "nuisance industries or other use which
 22 would discourage the use of the development area
 23 for anything other than commercial or industrial
 24 use."
 25 What's meant by nuisance industry, to

1 the best of your knowledge?
 2 MR. FULLER: Objection. Calls for a
 3 legal conclusion.
 4 Q. (BY MR. ERICKSON) I'm just trying to
 5 understand what this term means with regards to
 6 this restriction.
 7 MR. FULLER: Same objection.
 8 THE WITNESS: Nuisance industry might
 9 be like a fat rendering plant.
 10 Q. (BY MR. ERICKSON) Okay.
 11 A. Something that would put off a noxious
 12 odor or noise.
 13 Q. Okay.
 14 A. Something that you wouldn't want to put
 15 your business by.
 16 Q. Okay. Again, right above that it says
 17 that it's discouraged that these will be used for
 18 dwellings. So there's no -- are there any
 19 dwellings in there right now, residential
 20 dwellings?
 21 A. The -- a nuisance industry might even
 22 be an Anheuser-Busch.
 23 Q. Okay. I appreciate that.
 24 A. Rail cars clanking and steam and maybe
 25 even some odors.

1 to Printcraft when they asked for copies of the
2 agreements.

3 Q. (BY MR. ERICKSON) Oh, you mean in
4 September, when we asked for those copies?

5 A. Yes.

6 Q. All right. I'll just represent to you
7 that I don't have a copy of that in any of these
8 documents here, but I will search for those.

9 But as best you understand, there was
10 some meeting of the board, and there was minutes
11 that record a change in the rates?

12 A. Yes.

13 MR. FULLER: I think an additional copy
14 has also been provided in response to discovery.

15 MR. ERICKSON: Okay.

16 MR. FULLER: I'll check and get you the
17 exact numbers.

18 MR. ERICKSON: Well, I -- was it then
19 attached to the third party agreement as a new
20 schedule?

21 MR. FULLER: No.

22 MR. ERICKSON: No.

23 THE WITNESS: It was when I sent it to
24 the Travis in September.

25 Q. (BY MR. ERICKSON) It was attached to

1 actually contains paragraph 15. And then it
2 appears to me that Count III, at paragraph 20,
3 also incorporates the allegations that are made
4 in paragraph 15. Does that make sense?

5 A. Okay.

6 Q. All right. And I'll ask you some
7 questions about some of these things.

8 It appears to me in Count I, which is
9 on page 10, that Sunnyside is making a claim for
10 what appears to be \$44,908.51. Do you see that?

11 A. Okay.

12 Q. And I've read through the allegations
13 in paragraph 7 and paragraph 8. It appears to me
14 that Sunnyside is saying that these expenses or
15 these moneys, damages, were incurred directly and
16 proximately because of the actions taken by
17 Printcraft; is that accurate?

18 A. That's correct.

19 Q. It's Sunnyside's position that each and
20 every one of these expenses was caused by
21 Printcraft?

22 A. Yes.

23 Q. There was no other cause?

24 A. That's correct.

25 Q. In paragraph 7 -- well, in Count I,

1 the copy that you sent to Travis in September?

2 A. Yes.

3 Q. Okay. Well, I'll search around for
4 that. I'm certain I probably have it.

5 Let me have you turn to page 10 now of
6 Exhibit No. 31. I'll just represent to you, just
7 summarizing, that it appears to me that pages 10
8 through 17 are the counterclaim counts or causes
9 of action that were raised by Sunnyside. And I
10 just want to ask you some questions about those.

11 And again, I'm not trying to trick you.
12 I just want to make sure that I understand all of
13 this.

14 There appear to be -- there appear to
15 be four counts or causes of action raised by
16 Sunnyside in its counterclaim. Would you agree
17 with that?

18 A. I'm not sure what a cause of action is.

19 Q. I'll just represent to you that they
20 are the counts that are listed in bold.

21 A. It looks like there's four of them
22 listed.

23 Q. Okay. In paragraph 7, on page 10, it
24 refers to paragraph 15. That's for Count I. In
25 Count II, which begins on page 11 -- Count II

1 which is what we're taking on page 10, which
2 covers paragraph 7 and paragraph 8, it appears to
3 me, it appears to be for breach of contract. And
4 it refers to the third party agreement that we've
5 been talking about.

6 Essentially, as I understand it,
7 Sunnyside is claiming that Printcraft breached
8 this agreement by its actions and conduct?

9 A. Okay.

10 Q. Is that accurate?

11 A. Yes.

12 Q. Okay. In paragraph 7 it talks about
13 Sunnyside suffering a temporary failure during
14 June of 2006. Do you see that there?

15 A. Yes.

16 Q. Okay. Is it Sunnyside's position that
17 that temporary failure was solely caused by
18 Printcraft?

19 A. Yes.

20 Q. There was no other reason?

21 A. That's correct.

22 Q. Okay. Can you tell me how many
23 connections there were to the system in June of
24 2006?

25 A. I don't have that with me.

1 Q. Okay.

2 A. I think there was 10 or 11, but I'd
3 have to add them up.

4 Q. And Printcraft would have been one of
5 these 10 or 11?

6 A. Yes.

7 Q. Okay. Again, this paragraph
8 incorporates paragraph 15, which has a number of
9 subparagraphs. It actually goes for about two
10 pages, I would say.

11 Let me have you just brush through
12 those real quick, if you don't mind. Just kind
13 of familiarize yourself with them.

14 A. Okay.

15 Q. Okay. As I understand it, what's being
16 set forth in paragraph 15, which has
17 subparagraphs (a) through (l), are statements
18 that are made by Sunnyside saying this is what
19 Printcraft did that caused the failure; is that
20 accurate?

21 A. Pretty much.

22 Q. Okay. And I understand that you've
23 done some additional discovery and that your
24 responses to our discovery requests may supply
25 additional information in addition to what we see

1 here.

2 But the last sentence in paragraph 7 I
3 want to ask you about. It says that this
4 temporary failure resulted in an investigation by
5 the District Seven Health Department and the
6 issuance of a notice of violation and certificate
7 of disapproval to Sunnyside; is that accurate?

8 A. Yes.

9 Q. There was no other causes or reasons
10 that this notice of violation and certificate of
11 disapproval to Sunnyside was issued?

12 A. That's correct. This notice of
13 violation was issued because of the failure of
14 the system.

15 Q. Okay.

16 A. Without the failure, we were only
17 dealing with expansion of the system. And it
18 converted it to dealing with a failure of the
19 system.

20 Q. Okay. And again, Sunnyside's position
21 is that Printcraft was the sole cause?

22 A. Absolutely the sole cause.

23 Q. Even though there were 10 or 11
24 connections total onto the system at that
25 particular time?

1 A. Even though there were 10 or 11
2 connections, that's correct.

3 Q. Okay. I just want to make sure I
4 understand what the position is.

5 Is it Sunnyside's position, then, that
6 it was in full compliance with any applicable
7 laws or regulations with regards to that system
8 at the time that this temporary failure occurred?

9 A. Well, not at the time that it occurred.
10 We were in violation because of Printcraft Press.

11 Q. Okay. Well, let's back up.

12 A. But prior to Printcraft Press, yes, we
13 were in compliance.

14 Q. The day before this temporary failure
15 occurred, it's Sunnyside's position that they
16 were in full compliance?

17 A. No, four or five months before. The
18 day that the -- that Printcraft Press started
19 using -- the day before Printcraft Press started
20 using the facility, we were in full compliance.

21 Q. Okay. So the very day that Printcraft
22 is hooked up and actually starts discharging into
23 the system is the day that Sunnyside alleges that
24 they were no longer in compliance?

25 A. The day that they chose to lie, deny,

1 and dump is what put us in violation and caused
2 our failure.

3 Q. Okay. And let's be specific about
4 that, Mr. Beck. What day was that? When did
5 that occur?

6 A. Well, we don't know. I mean, when they
7 started business, they represented to us that
8 they had 30 employees for sanitary sewer purposes
9 only.

10 Q. Okay. And who made that
11 representation?

12 A. Travis Waters did.

13 Q. Was it made -- was that representation
14 made in response to a request or a statement from
15 you?

16 A. That was made at the time of the CC&R
17 drawing interview. I asked him what their uses
18 and needs was going to be for sewer, and he told
19 me 30 employees for sanitary purposes only.

20 Q. I want to make sure that I understand
21 that too. Is that how it was phrased, "What are
22 your sewer services needs going to be?"

23 A. I said, "What are your needs for sewer
24 service going to be?"

25 Q. Okay.

1 A. And he said, "We should have 30
2 employees, and that's all we'll need it for."
3 Q. You never asked him how many employees
4 that he had; he volunteered that to you?
5 A. Yes. He said he would need services
6 for 30 employees.
7 Q. Did you make any other inquiries other
8 than that time?
9 A. Well, my inquiry was -- he said he
10 needed it for 30 employees, and my inquiry was,
11 "For sanitary purposes only?" And he said,
12 "Yes."
13 Q. Okay. It's your position that you were
14 very specific about what that term "sanitary
15 purposes only" was?
16 A. Sanitary purposes for those 30
17 employees, yes.
18 Q. Do you recall approximately when this
19 happened, this conversation that you're talking
20 about?
21 A. No.
22 Q. Did you know what type of business
23 Mr. Waters operated?
24 A. Yes. I knew that he printed.
25 Q. Did you ask him any specific questions

1 about his business?
2 A. No.
3 Q. Why not?
4 A. Well, because he answered my questions.
5 What more could I ask him?
6 Q. It seems to me that there's quite a few
7 questions that you might be able to ask him. But
8 it's your opinion or your testimony that you
9 didn't ask him anything further?
10 A. Once he satisfied my concerns that his
11 purposes was for his employees or for sanitary
12 reasons, there's no more questions to ask. What
13 more could I ask other than the needs for the
14 people?
15 Q. Did you inquire about the processes
16 that he used in his business?
17 A. I didn't know that he had any
18 processes.
19 Q. But as you sit here today, you did know
20 what business he operated. You knew it was
21 Printcraft Press business?
22 A. That's correct. But I also know that
23 Anheuser-Busch processes barley, but unless they
24 tell me, I don't know that they're going to be
25 putting a million gallons a day into a sewer

1 system.
2 Q. This failure that you mentioned in
3 paragraph No. 7 in this counterclaim, this
4 temporary failure, you state that it resulted in
5 an investigation by District Seven. Do you know
6 when this investigation began?
7 A. It began the day that we went into
8 their office and told them that we had a problem.
9 Q. Do you remember approximately what day
10 that was?
11 A. No.
12 Q. I know that some of the documentation
13 that we'll go through refers to it being in June
14 of 2006; does that sound accurate?
15 A. Yes.
16 Q. Do you -- well --
17 MR. FULLER: Counsel, the paragraph
18 you're referring specifically refers to June
19 2006.
20 MR. ERICKSON: Oh, yes, it does.
21 You're exactly right.
22 Q. (BY MR. ERICKSON) How was that
23 investigation started by the district? What did
24 they do?
25 A. I don't know what you mean.

1 Q. Did they come to you? Did they call
2 you on the phone? I just want to know what
3 process --
4 A. Well, we went to them.
5 Q. Okay. And reported --
6 A. And told them that we a had problem.
7 Q. Okay.
8 A. They came out and looked at it and then
9 wanted to know what we were going to do for a
10 solution.
11 Q. Who came out?
12 A. I think Kellye Eager, but I'm not sure.
13 Q. Was a report generated or any
14 documentation that you can remember?
15 A. Photographs, I've seen.
16 Q. Okay. And we'll be getting to those in
17 a few minutes.
18 Can you recall anything else about the
19 investigation itself, about what occurred?
20 A. (Witness shook head.)
21 Q. When Kellye was down there looking at
22 this, did you go down there with her?
23 A. No.
24 Q. Did any other representative of
25 Sunnyside go down there with her?

1 confirm that on the drawing. And in our copy, my
2 copy -- and so this may be my copy -- I didn't
3 have that drawing.

4 Q. Does Mr. Woolf have a copy that has
5 that second floor drawing on it?

6 A. I don't know. I don't know if he had a
7 drawing or if he just had the representation from
8 Mr. Waters. He's the one that told -- that's
9 told me or told us --

10 Q. Now, I thought you just said a minute
11 ago that Mr. Woolf had a copy that had this.

12 A. Oh, I think that he did, but I don't
13 know for sure. I've never seen it. And I only
14 think that because that's what he took from his
15 review of the drawings, is that it would be used
16 for storage. And I don't know if he got that
17 from the drawing or if he got it from Mr. Waters.

18 Q. Have you ever asked Mr. Woolf to look
19 for that, his copy?

20 A. Yes, I think so.

21 Q. Did he provide anything to you, or to
22 Sunnyside, to Mr. Fuller?

23 A. I don't know. If I recall right, I
24 believe it was in Travis's deposition that he
25 alleged there was another drawing. Now, whether

1 or not Kirk had that, I don't know.

2 Q. Okay. In talking with Mr. Waters --
3 and this is your specific conversations with him
4 that you referred to you when he provided the
5 drawing to you and so forth -- did you ever
6 represent or explain to Mr. Waters what the size
7 of the system was that Sunnyside was providing to
8 its occupants?

9 A. No. I just calculated in my mind the
10 number of people that he said he would be using
11 compared to our capacity and knew that we were
12 sufficient.

13 Q. What was your capacity at that time?

14 A. 500 gallons a day.

15 Q. But you don't recall saying to
16 Mr. Waters that the capacity was 500 gallons a
17 day?

18 A. You mean for the entire system?

19 Q. Right.

20 A. No, I didn't.

21 Q. Did Mr. Waters ever ask you about that?

22 A. No.

23 Q. Do you recall approximately when it
24 was, what date it was, that Printcraft made its
25 connection to the sewer system?

1 A. No, I don't. I mean, are you talking
2 about when they started using it or when they
3 physically made the connection?

4 Q. Let's talk about when they started
5 using it. Are you aware of approximately when
6 that occurred?

7 A. No. I think it's sometime in March,
8 April.

9 Q. Of 2006?

10 A. Yes, but I'm not positive.

11 Q. Before Printcraft began using the
12 system -- well, let me back up.

13 I think you mentioned that in June of
14 2006 there were 10 or 11 connections to this
15 system; is that accurate?

16 A. Well, there again, there -- no, it's
17 not accurate.

18 Q. Okay.

19 A. I said it was approximate. And there's
20 also a definition that needs to be defined here
21 when you talk about whether it's a connection
22 that pays for a service or whether it's a
23 structure that's connected to it.

24 Q. Okay.

25 A. And there was one, two -- I think seven

1 or eight structures.

2 Q. Prior to Printcraft's structure?

3 A. That's correct.

4 Q. And of those seven and eight
5 structures, there would have been a total of
6 around ten occupants; is that fair to say?

7 A. No, multiple, more than that.

8 Q. There would be more than that.

9 Okay. How many do you think there
10 were?

11 A. Did we provide them with the --

12 Q. And I'm not going -- I'm not going to
13 hold you to it. I just want to know
14 approximately. And I've got other documents I'm
15 going to go through where you'll have a chance to
16 clarify.

17 I'm just trying to understand, at the
18 time that Printcraft was hooked up, how many
19 others were hooked up at that time?

20 A. I'd have -- I can't really give you --
21 I mean, have the employee count, and it's
22 something that I think we furnished you.

23 Q. Uh-huh. Okay. But that's accurate --

24 A. Yes.

25 Q. -- as to how many -- I want to keep

1 saying buildings, but I should say occupants.
 2 A. That accurately describes the use,
 3 prior to and since.
 4 Q. Okay. Were there any connections made
 5 to the system after Printcraft?
 6 A. Yes.
 7 Q. How many were made?
 8 A. There was one connection. I know
 9 there's -- no, there was two connections. Well,
 10 I don't know. I know for sure there was one, and
 11 maybe two.
 12 Q. Okay.
 13 A. There was also a change in one of the
 14 connections.
 15 Q. What do you mean by that?
 16 A. Well, ProWay Manufacturing ceased
 17 operations in the shop building, and Mountain
 18 Truss started their operations up afterwards.
 19 Q. In the same building?
 20 A. Yes. So it went from like -- I mean,
 21 I'd have to give you the number -- the
 22 employees -- the use changed.
 23 Q. Okay.
 24 A. From like four employees to like 14.
 25 Q. And just so I understand, it was within

1 the same building, the same premises?
 2 A. Right.
 3 Q. One left and another one came in?
 4 A. Right. A different lessee under the
 5 same preference -- different type of
 6 manufacturing process.
 7 Q. Okay. Before Printcraft began actually
 8 discharging into the system, do you have any idea
 9 what the capacity was that was left?
 10 In other words, I guess my question
 11 really is: Do you know how much of your system
 12 was actually being used on a daily basis out of
 13 those 500 gallons a day?
 14 A. Yes. I've back-calculated that and
 15 provided that to you.
 16 Q. Okay. That's in the documentation that
 17 you provided?
 18 A. Yes.
 19 Q. Okay. Just out of curiosity -- and I
 20 realize the documents going to be the accurate
 21 one -- do you just recall approximately how many
 22 gallons per day you were using before Printcraft
 23 began discharging?
 24 MR. FULLER: Object to the form of the
 25 question. Gallons used --

1 MR. ERICKSON: He describes --
 2 MR. FULLER: -- or discharged?
 3 MR. ERICKSON: Excuse me. Yeah,
 4 discharged.
 5 Q. (BY MR. ERICKSON) We're talking about
 6 a tank that I understand has a capacity of
 7 500 gallons per day; is that accurate?
 8 A. Yes.
 9 Q. And so my question is: Can you tell
 10 me, on a daily basis, before Printcraft hooked
 11 up, just approximately how many gallons per day
 12 were being used?
 13 A. Yes, somewhere between 200 and 300.
 14 Q. Okay. With the occupants that already
 15 existed?
 16 A. Yes. And Printcraft Press should have
 17 added about a hundred.
 18 Q. Based on your calculations?
 19 A. Based on the use that we're currently
 20 using at right now. We were using about
 21 3 gallons per individual per day on average.
 22 Q. And I'll be getting to that a little
 23 later.
 24 Let's talk a little bit more about this
 25 temporary failure that's described in your

1 counterclaim, Sunnyside's counterclaim. When did
 2 you first realize that there was a problem with
 3 the system?
 4 A. I can't remember what it was for, but I
 5 went down there and found ink all over the
 6 ground, coming out of the ground.
 7 Q. Did somebody contact with you and ask
 8 you to come and look at it?
 9 A. No.
 10 Q. It was something you discovered on your
 11 own?
 12 A. Yes.
 13 Q. After you made that discovery, then
 14 what happened?
 15 A. Well, that's when we talked to District
 16 Seven, and then and we went and visited Travis --
 17 or I did.
 18 Q. Immediately after you discovered this?
 19 A. Well, pretty close, yeah.
 20 Q. When you say "pretty close," give me an
 21 idea of what you mean.
 22 A. Within a week.
 23 Q. Okay.
 24 A. Within a day or two.
 25 Q. Okay. What was said?

1 A. Well, I was talking to --
 2 Q. -- Mr. Waters?
 3 A. Right. But I was talking two different
 4 time periods.
 5 Q. Okay. And I must have misunderstand.
 6 I want to make sure I understand.
 7 A. Okay. I was -- he told us -- he told
 8 us 30 employees.
 9 Q. Okay.
 10 A. And where I come up with the
 11 100 gallons a day was based on the 3 gallons that
 12 we're using per person now.
 13 Q. Afterwards?
 14 A. Afterwards.
 15 Q. In retrospect, you calculated --
 16 A. That was a retrospect number, yes. But
 17 I still knew that we were -- that we were using
 18 about 200 gallons a day for everybody in there
 19 and his 20 people wasn't going to be a problem
 20 for us.
 21 Q. 30 people.
 22 A. 30 people.
 23 Q. Okay. So at the time that --
 24 A. At the time, I thought it was probably
 25 about 200 to 250 gallons he would be giving us,

1 but in retrospect, it's really only 100.
 2 Q. And at the time that Sunnyside alleges
 3 that this conversation took place between
 4 yourself and Mr. Waters that -- that the daily
 5 discharge into the system was 100 to 150 gallons
 6 a day, somewhere right in that range, or was it
 7 higher than that at that time?
 8 A. Well, I back-calculated it. But based
 9 on what our well was using, yeah. I mean, we had
 10 some heavier days.
 11 Q. Sure.
 12 A. In the winter of 2004, when we had no
 13 sprinkler systems, all we had to do was deduct
 14 out of there the amount for Corporate Express.
 15 Q. Okay.
 16 A. And that was an average of about
 17 200 gallons a day that we were using then.
 18 Q. Okay. This Exhibit No. 53 appears to
 19 have been sent to a number of different people,
 20 including a Richard Horne. Do you see that?
 21 A. Yeah.
 22 Q. I think we've identified everybody else
 23 that's listed there. Who is Mr. Horne?
 24 A. He's Kellye Eager's boss, I think.
 25 Q. With the district?

1 A. Yeah.
 2 Q. "District director," it says, after his
 3 name. And that's with District Seven?
 4 A. Yeah.
 5 Q. Okay. Now, this appears -- what I just
 6 handed to you has been marked as Exhibit No. 54,
 7 and it appears to be a letter of the same date as
 8 the previous letter directed from Mr. Crockett to
 9 your attorney, Mr. Fuller. Have you ever seen
 10 this letter before?
 11 A. Yes.
 12 Q. And what do you understand the purpose
 13 of this letter to be?
 14 A. Acknowledging his previous letter,
 15 telling me that they intend to initiate
 16 proceedings for imposition of the sanitary
 17 restrictions.
 18 Q. You understand this to be just a
 19 notice, then, essentially, of what they intend to
 20 do?
 21 A. Yeah.
 22 Q. Okay. I'm handing you what's been
 23 marked as Exhibit No. 55, which is a letter dated
 24 September 28th. It looks like it's a letter from
 25 you directed to Kellye Eager; is that correct?

1 A. Yeah.
 2 Q. And can you tell me what the purpose of
 3 this letter is?
 4 A. Responding to her notice of intent to
 5 reimpose and trying to get her to follow the law.
 6 Q. Essentially, it was your attempt to
 7 point out to them where the district was going
 8 wrong and your request that they -- that they do
 9 what you're asking them to do?
 10 A. Yes, and telling them that our failure
 11 was because we received more than 2,000 gallons a
 12 day of process flow; that it really wasn't really
 13 a failure, the system really hadn't failed; and
 14 that based on representation from Travis, that we
 15 had quit putting in this kind of water per day;
 16 and then reaffirming again our position of their
 17 approving our system before and that they need to
 18 honor it.
 19 Q. So it's just the same -- it's kind of
 20 the same positions that Sunnyside and the
 21 district had taken before?
 22 A. Yes.
 23 Q. Now, I'm handing you what's been marked
 24 as Exhibit No. 56, which is an October 2nd letter
 25 from District Seven to yourself. It appears to

1 there or even if we did, but a number of them --
2 how do you determine what the design system of a
3 park like that should be?

4 A. Well --

5 Q. Do you simply do it based on how many
6 occupants you have at the time the development
7 occurs?

8 A. No.

9 Q. How do you do it?

10 A. The only way that you can do it is you
11 base it on -- because, see, there's so many
12 variables. I mean, you could have, say, 20
13 buildings with one guy in each building.

14 Q. Sure.

15 A. 20 guys. But if you have 20 guys in
16 each building, now you've got, what, 40 -- or
17 400. You've got 400. So you don't know what's
18 going to be in each building.

19 Q. And so that's my question. How do you,
20 then -- based on that, when you're a developer,
21 how do you know how to comply with the IDAPA
22 regulations in your design?

23 A. The only way that you can -- well, the
24 way we did, the only way I know of, is that you
25 start small and then you expand. And you can

1 expand -- according to the regulations, you can
2 expand up to 2,500 gallons.

3 Once you get to 2,500 gallons, then you
4 either need to hook to a city system or do an
5 LSAS or do a -- it's really referred to a third
6 party system, some kind of a waste processor.
7 You can do any one of those three once you get
8 there. But if you don't get there, you don't do
9 any of those.

10 But that's -- I mean, that's part of
11 the reason that, obviously, we have to have rules
12 and regulations; okay? I mean, we can't -- we
13 have a system that can only do -- I mean, until
14 2006, it could only do 500 gallons a day. Well,
15 obviously, we can't take on some lot owner that
16 wants to dump us 10,000 gallons a day. But we
17 know that employees don't do that. That only
18 comes in an industrial process-type environment.

19 So that's what we did from the very
20 beginning is we excluded industrial process
21 waste. We just -- we can't accept that. I mean,
22 if they're willing to pay for it, but it's not --
23 I mean, our system is not designed for it, we
24 don't allow for it, we can't accept it.

25 Because, see -- and this is part of

1 what I think is the big misunderstanding is we
2 have those rules and regulations for very good
3 reasons. Number one, what if everybody decided
4 to do a process waste? How are we going to
5 handle that?

6 Q. How would do you know?

7 A. Well, because our regulations prohibit
8 it. We don't allow anyone to hook onto our
9 system and dump process waste in it, because we
10 have no other choice. We don't have the capacity
11 to take everyone doing 10,000 gallons a day,
12 20 buildings doing -- I mean, it's just
13 impossible. There's no way to do that, so we
14 have to exclude it.

15 And that's why -- I think one of the
16 things that's very misunderstood is that even if
17 we had an LSAS, we'd still be sitting here today
18 with this same argument. What our system is down
19 there is -- it totally makes no difference. We
20 will handle that end.

21 What's important is that we follow the
22 regulations. But we put up regulations so that
23 we're not going to have 20 businesses dumping
24 10,000 gallons a day on us. We just couldn't do
25 that.

1 Q. So what you're saying, then, is that
2 Sunnyside contends that they complied with IDAPA
3 regulations by putting in the system that was put
4 in with the intention to expand it, as you've
5 discussed at length in some of your testimony
6 already?

7 A. That's correct.

8 Q. In order to meet any future needs that
9 might exist?

10 A. With the restriction on all applicants
11 that we take no process waste.

12 Q. Do you have a written application that
13 sets that out?

14 A. No.

15 Q. Any letters or any other documents that
16 you send out to prospective buyers?

17 A. Well, we just tell them in the
18 beginning. I mean, that's --

19 Q. Do you send them a copy of your rules
20 and regulations before they buy a lot?

21 A. If they want it, you bet.

22 Q. Well, I'm not asking about whether
23 they want it. I would assume that most people
24 wouldn't know that they exist, Mr. Beck; wouldn't
25 you agree with that?

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1 absolutely say you don't know.

2 MR. BRUNSON: It was probably a poor
3 question.

4 MR. CROCKETT: You don't have to guess. If
5 you don't know, say I don't know.

6 THE WITNESS: I don't know as the question
7 was asked.

8 Q. BY MR. BRUNSON: As to what goes into a
9 sewer system, potentially, there's more product that
10 could be -- more variety of product, when I say that,
11 I mean, as you classified break room, I'm trying to
12 remember -- you gave a whole list. There was break
13 room; there was waste as a result of industrial
14 process?

15 A. Uh-huh.

16 Q. Generally, again, based on your
17 experience, there was more probability in having a
18 higher volume of waste when you compare residence to
19 an industrial situation?

20 MR. FULLER: Object as to form.

21 THE WITNESS: I would say yes.

22 Q. BY MR. BRUNSON: Again, referring to
23 Exhibit *-003 and your site visit on, I believe it
24 was June 28th of 2006, when you were describing what
25 you viewed, I believe you testified that you were

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1 surprised at the vast amount of product; is that
2 correct?

3 A. Yes.

4 Q. Why were you surprised?

5 A. **Just from the experience I've had with**
6 **household residences of a single dwelling, the**
7 **product is, you know, less in volume. With the**
8 **commercial facility here and seeing the amount of**
9 **product on the ground, I was just overtaken by the**
10 **amount of product being exposed to the environment**
11 **and the potential health risk at hand.**

12 Q. Based on what you observed, did you make
13 a determination that there was a capacity problem?

14 MR. FULLER: Object as to form.

15 THE WITNESS: At that point, I was just
16 verifying the sewage on the ground. Speculation of
17 such was made, but my immediate concern was taking
18 care of the sewage on the ground.

19 Q. BY MR. BRUNSON: Let me ask you this:
20 Based on your knowledge of District Seven's
21 involvement and your own involvement, and I
22 understand District Seven's involvement goes back
23 quite some time in your review of the file and all
24 your knowledge regarding the situation, do you have
25 an opinion as to whether the existing sewer system at

1 Sunnyside has a capacity problem?

2 MR. FULLER: Object as to form.

3 THE WITNESS: I do agree there is a capacity
4 issue.

5 Q. BY MR. BRUNSON: What is that?

6 A. **We have 11 connections to a system that**
7 **was originally permitted for two, and we only have**
8 **half of the development at present.**

9 Q. Based on your knowledge of IDAPA and
10 other laws, has the existing system at Sunnyside
11 violated IDAPA or any other regulations?

12 MR. FULLER: Object as to form.

13 THE WITNESS: Yes.

14 Q. BY MR. BRUNSON: Why?

15 A. **It's in a pit. It could be flooded if**
16 **there was a major snow melt, because the water could**
17 **potentially drain directly into the pit. The tanks**
18 **in series requirements do not meet the IDAPA**
19 **requirements for the said volume of the tanks as**
20 **placed in series. The tanks were installed without**
21 **inspection, and there were noted deficiencies to what**
22 **was installed to that temporary system.**

23 Q. Anything else?

24 A. **Again, process flows were not taken into**
25 **consideration with the temporary expansion. And**
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1 **again, future build-out has not even been taken into**
2 **account.**

3 Q. Anything else you can think of?

4 A. **I think that is it.**

5 Q. Let me ask a few follow-ups on that.

6 Can you identify the IDAPA provisions that Sunnyside
7 is in violation of?

8 A. **I don't have the regulations to look**
9 **those up. I couldn't cite them accurately.**

10 Q. Based on your testimony, the list that
11 you just gave me would constitute IDAPA violations;
12 you're just not sure on the specific citation?

13 A. **Correct.**

14 Q. Any other laws that they violated, other
15 than IDAPA?

16 A. **Not that I can think of.**

17 Q. Based on your knowledge of the file and
18 based on your knowledge of District Seven's
19 involvement and your own involvement, when were they
20 first in violation of IDAPA?

21 A. **When they knew for the first time**
22 **that -- basically seeing the system failed, they**
23 **should have come in right then. I can't say as to**
24 **when that exact date was based on my inspection. But**
25 **upon seeing the sewage on the ground, it would have**

1 occurred then.

2 And with knowing that their original
3 permit was only for two connections, with the third
4 connection, they should have come in to get another
5 permit.

6 (Exhibit *-028 marked.)

7 Q. BY MR. BRUNSON: You've just been handed
8 what's been marked as Exhibit *-028 to your
9 deposition. Have you had a chance to look at that
10 document?

11 A. Yes.

12 Q. What is that document?

13 A. It's a septic permit issued in August of
14 '96.

15 Q. Is this something District Seven
16 originated?

17 A. Yes.

18 Q. Did you prepare this document?

19 A. No. Jed Finlinson did.

20 Q. Did you say Jed?

21 A. Jed.

22 Q. Is Jed still employed with District
23 Seven?

24 A. No.

25 Q. Did you know him? Do you know him?

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1 A. I did know him where he was still an
2 employee, yes.

3 Q. Have you reviewed this document previous
4 to today?

5 A. Yes.

6 Q. What is the purpose of this document?

7 A. To allow installation of a septic
8 system, septic tank and drain field up to 300 gallons
9 per day maximum.

10 Q. Who was this issued to?

11 A. Sunnyside Industrial Park.

12 Q. Was this necessary for them to develop
13 the industrial park?

14 A. This was for the sewage for one to two
15 buildings.

16 Q. Are you aware of any other permits that
17 were issued by District Seven to Sunnyside for a
18 septic tank?

19 A. The only other permit was the temporary
20 emergency expansion that we've discussed earlier
21 today.

22 Q. I see an expiration date on this
23 document towards the top. It says it expires August
24 15th of 1997. What does that mean?

25 A. It gives the permit validity for one

1 year.

2 Q. Is this a temporary permit, then?

3 A. It's a permit to allow the construction
4 and installation up to a year.

5 Q. What are they supposed to do after a
6 year is my question?

7 A. If they do not install the system within
8 that time frame, they can pay a renewal fee to extend
9 it for another year.

10 Q. Do you know if that happened in this
11 case?

12 A. It did not.

13 Q. Again, it says expires August 15th,
14 1997. When the permit expired, was their continued
15 use of the septic system in violation of any law?

16 MR. FULLER: Object as to form.

17 THE WITNESS: I can't answer that.

18 Q. BY MR. BRUNSON: Did you not understand
19 my question?

20 A. I can't answer the question as asked.

21 Q. If you know, what is the consequence of
22 not renewing the septic permit that we're talking
23 about here in Exhibit *-028?

24 A. As long as the system was installed,
25 there is no consequence. If they choose to install

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1 it after the permit is expired, then they no longer
2 have a valid permit; therefore, we would have to go
3 after the potential system for not having a valid
4 permit.

5 Q. So this just gives them a year to get
6 the thing installed?

7 A. Correct.

8 Q. To your knowledge, was it installed
9 within the year?

10 A. Yes.

11 Q. I believe earlier you alluded to the
12 fact that one other violation of IDAPA was that they
13 added an additional building to this septic system;
14 is that correct?

15 A. They've added multiple buildings to the
16 system beyond this permit.

17 Q. Let me ask you this: It says 300
18 gallons per day, one or two buildings. When a third
19 building was connected to the septic system, in your
20 opinion, was that a violation of IDAPA?

21 A. Yes.

22 Q. You previously testified that one of
23 your roles with District Seven was enforcement. Let
24 me ask you this: Was District Seven aware that a
25 third unit had been connected, or when a third unit

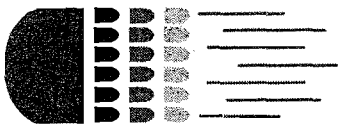
DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO

PRINCRAFT PRESS, INC., an Idaho)
corporation,)
)
Plaintiff/Counterdefendant,) Case No.
) CV-06-7097
vs.)
)
SUNNYSIDE UTILITIES, INC., an)
Idaho corporation, SUNNYSIDE PARK)
OWNERS ASSOCIATION, INC., an)
Idaho corporation, and SUNNYSIDE)
INDUSTRIAL AND PROFESSIONAL PARK,)
LLC, an Idaho limited liability)
company,)
)
Defendants/Counterclaimants.)
)

DEPOSITION OF KELLYE EAGER

Wednesday, April 23, 2008, 9:00 a.m.

Idaho Falls, Idaho



T&T REPORTING
CERTIFIED SHORTHAND REPORTERS

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REPORTED BY:

Sheila T. Fish,
CSR

PREPARED FOR:

1404

MR. BRUNSON

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EXHIBIT

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DEPOSITION OF KELLYE EAGER - 04/23/08

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1 place. And when Linda Vecellio conducted the final
2 inspection, I believe it was around the 23rd -- or,
3 excuse me, the 3rd or 4th of July, there were no
4 tanks added at that time. But upon later visits to
5 the site, I found two tanks installed after our
6 inspection.

7 **Q. Was that a problem?**

8 A. It was a concern.

9 **Q. Why is that?**

10 A. Not knowing the condition of the tanks,
11 not knowing what tanks were installed. They're
12 required to be inspected and be approved tanks.

13 **Q. Was that a violation of IDAPA?**

14 A. Yes, it was.

15 **Q. What happened as a result of that
16 violation of IDAPA?**

17 A. I did go out at a later time and met
18 Doyle after he had excavated around the tanks to try
19 to come up with a manufacturer approval of the tanks.

20 **Q. What happened as a result of that?**

21 A. I did inspect the tanks. There were
22 some concerns that baffles had been removed. They
23 were later installed, and we gave at least
24 acknowledgment that they met manufacturer approval.

25 **Q. Okay.**

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1 A. It is.

2 **Q. And --**

3 A. I believe --

4 **Q. Who filled out that document?**

5 A. I don't know.

6 **Q. Do you recognize the signature where it
7 says signed by?**

8 A. I can't make it out.

9 **Q. Do you know why this application was
10 made?**

11 A. For the temporary expansion of the
12 septic system for the industrial park.

13 **Q. Okay. So this was the actual
14 application that resulted in eventually the issuance
15 of Exhibit 6?**

16 A. Correct.

17 **Q. Where it says proposed disposal system,
18 it says standard or basic alternative systems. Do
19 you see where I'm looking at?**

20 A. Uh-huh. Yes.

21 **Q. Then there's actually two circled,
22 trench and gravelless trench. What is the
23 significance of that?**

24 A. It's letting us know what they're
25 planning to install. The gravelless trench is what

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1 A. And that's it as far --

2 **Q. Do you know when that acknowledgment
3 occurred?**

4 A. Not an immediate date. There's
5 documentation.

6 **Q. We'll probably get to some of that. I
7 think I'm going to have some questions about some of
8 the stuff that you handed me today, but I think this
9 might be a good time to take a break, and I can look
10 at this.**

11 MR. BRUNSON: Let's take a break.

12 (A recess was taken from 10:39 a.m. to
13 10:58 a.m.)

14 (Exhibit No. 43 marked.)

15 MR. BRUNSON: Let's go back on.

16 **Q. BY MR. BRUNSON: You've just been handed
17 what's been marked as your Deposition Exhibit 43. Do
18 you recognize that document?**

19 A. Yes.

20 **Q. What is that document?**

21 A. The permit application for what would be
22 the temporary expansion of the septic system for
23 Sunnyside Industrial Park.

24 **Q. Is this one of the documents that you 1405
25 brought with you today pursuant to the subpoena?**

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1 was earlier on the inspection before the infiltrator.

2 The trench would be the gravel and perforated pipe.

3 **Q. And then if you look up a little bit,
4 too, it says constructional activity, and there's
5 three options there: New construction, enlargement,
6 or replacement; and replacement appears to be marked.**

7 A. Uh-huh.

8 **Q. Is that an accurate classification of
9 what they were proposing to do?**

10 A. No. It would have been an enlargement.

11 **Q. This isn't something District Seven
12 would have filled out?**

13 A. Correct.

14 **Q. It was done on behalf of Sunnyside; is
15 that correct?**

16 A. Yes.

17 **Q. It could have been done by a member of
18 Sunnyside or the person who is going to perform the
19 work?**

20 A. The representation or their
21 representative or an actual person of the industrial
22 park, yes.

23 **Q. It lists Kelly Clay as the installer.
24 Do you know if Kelly Clay was the one that actually
25 installed this?**

DEPOSITION OF KELLYE EAGER - 04/23/08

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1 A. I would have to look at the final
2 inspection report.
3 Q. That is Exhibit 9.
4 A. It does have Clay Excavation as the one
5 that installed the system.
6 Q. The third page of Exhibit 43, it looks
7 like it's dated 6/29 of '06, and there's some
8 handwriting. Do you know whose handwriting that is?
9 A. It's Mike Lund. It says at the bottom.
10 He's the engineer that came up with the proposal.
11 Q. Mike Lund at that time was with Benton
12 Engineering?
13 A. I believe, yes.
14 Q. Okay.
15 A. He was with them still.
16 Q. And I think the last time that we
17 deposed you I asked you some questions -- the design
18 flows issue came up, and you mentioned that Kirk
19 Woolf had brought in some design flows. Is that what
20 this page is referring to?
21 A. Correct.
22 Q. What were the design flows?
23 A. They're proposing that they should
24 install 32 more infiltrators based on 60 employees at
25 20 gallons per day.

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1 Q. So a total of 1,200 gallons per day? Is
2 that --
3 A. Well, you have that, and then you divide
4 it by the application rate to come up with the square
5 footage needing to be added.
6 Q. Okay.
7 A. Then with the infiltrators being
8 proposed, you get a 40 percent reduction. So that's
9 where you get the 32 infiltrators.
10 Q. Okay. Did District Seven agree to this
11 proposal?
12 A. Not as to the application rate. This is
13 actually my handwriting down at the bottom. I wanted
14 to be consistent with the original application rate
15 used by Jed Finlinson and changed the application
16 rate, and that is depicted on the permit issued.
17 Q. So actually how many infiltrators would
18 they need under that application rate?
19 A. I don't know off the top of my head.
20 Q. Would it be more or less?
21 A. It would be more.
22 Q. The permit, again, is Exhibit 6; is that
23 correct?
24 A. Yes.
25 Q. Referring to page three of Exhibit 43,

1406

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1 do you know where the number 60 employees came from?
2 A. I do not.
3 Q. That's not a number that you came up
4 with?
5 A. No.
6 Q. You don't know who came up with that
7 number?
8 A. I believe Mike Lund.
9 Q. Do you know if he got that number from
10 Kirk Woolf or Doyle Beck?
11 A. I do not know where he came up with the
12 head count.
13 Q. I'm going to have you look at something
14 before I mark it. This is a document that I got in
15 response to the subpoena, and I'm wondering --
16 MR. FULLER: Issued to who?
17 MR. BRUNSON: Excuse me?
18 MR. FULLER: Subpoena issued to who?
19 MR. BRUNSON: To District Seven.
20 MR. CROCKETT: Off the record.
21 (Discussion off the record.)
22 MR. BRUNSON: Let's go back on.
23 Q. BY MR. BRUNSON: Do you recognize this
24 document?
25 A. I do. I would have to refresh my memory

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1 as to what it was specifically in reference to, at
2 what time.
3 Q. What is it?
4 A. It is information that Benton
5 Engineering put in place as a potential expansion of
6 the system.
7 Q. So this is something that would have
8 been given to you in that same June of 2006 time
9 period as far as you know?
10 A. Yes, according to the date.
11 MR. BRUNSON: Let's go ahead and mark it as
12 Exhibit 44.
13 (Exhibit No. 44 marked.)
14 Q. BY MR. BRUNSON: My question for you
15 regarding the exhibit is: There's some design
16 calculations. Do you see where I'm referring to on
17 the right-hand side?
18 A. Yes.
19 Q. It says total flow equals 124 times 20
20 GPD slash employee equals 2480 GPD. Do you see that?
21 A. Yes. The GPD is gallons per day.
22 Q. Okay. And is there any significance to
23 the number 2480?
24 A. Yes. It's 20 gallons less than a large
25 soil absorption system.

1 **Q. So based on this submittal, what is the**
 2 **requirement for the LSAS?**
 3 A. 2500 gallons per day.
 4 **Q. So under this submittal, they would not**
 5 **be doing an LSAS?**
 6 A. There would have to be questions before
 7 we would potentially look at this as being an
 8 accurate submittal. We would have the right to ask
 9 those as well as if we needed information of DEQ with
 10 their engineers to review it. We would have asked
 11 them to -- also to review it.
 12 **Q. Was this proposal ever accepted?**
 13 MR. FULLER: Object to the form.
 14 THE WITNESS: It was not.
 15 **Q. BY MR. BRUNSON: Why not?**
 16 A. It never went forward towards
 17 application.
 18 **Q. What do you mean by that?**
 19 MR. FULLER: Object as to form.
 20 THE WITNESS: This came in to us, and it was
 21 not tied to a specific -- the only application we got
 22 was for the temporary expansion. We never got an
 23 application specific to trying to install this
 24 system.
 25 **Q. BY MR. BRUNSON: Thank you. Let me ask**

1 maintain and operate the system. And then there's
 2 also an annual report requirement to document the
 3 operation and maintenance of the system. So there's
 4 longevity requirements of the system where the
 5 subsurface system does not have such requirements,
 6 unless it's an aerobic treatment unit.
 7 **Q. Based on your experience, do you know**
 8 **how much of a cost difference that would be?**
 9 A. I don't know.
 10 **Q. Is it significant?**
 11 A. It would be significant.
 12 **Q. All right. Just so the record's clear,**
 13 **Exhibit 44, was that submitted to you on behalf of**
 14 **Sunnyside?**
 15 A. Yes, it was. It was dropped off by
 16 Doyle Beck.
 17 **Q. Did Doyle say anything to you when he**
 18 **dropped it off?**
 19 A. It was left in my in-basket. There was
 20 also a document attached to it with an engineering
 21 proposal and a verbiage that was done by Mike Lund as
 22 well.
 23 **Q. I'll have you look at Exhibit 9 just**
 24 **really quick, and I'm referring to it just because**
 25 **you had mentioned the inspection that took place.**

1 **you this: Do you have any knowledge, based on your**
 2 **experience, of the relative cost --**
 3 MR. FULLER: To avoid confusion for the
 4 record, this, I think, has another exhibit on the
 5 bottom.
 6 MR. BRUNSON: Yes.
 7 MR. FULLER: It's also marked as Exhibit X.
 8 That is not your exhibit sticker; is that correct?
 9 MR. BRUNSON: That's correct.
 10 MR. FULLER: What exhibit number was
 11 attached to that document?
 12 MR. BRUNSON: It's Exhibit 44.
 13 MR. FULLER: Is there a sticker attached to
 14 it?
 15 MR. BRUNSON: Yeah. She's going to attach
 16 it, yeah.
 17 **Q. BY MR. BRUNSON: My question for you is:**
 18 **Based on your experience, is there a difference in**
 19 **cost between an LSAS and the type of system that was**
 20 **being proposed by Exhibit 44?**
 21 A. Yes, there would be. The large soil
 22 absorption systems are required to be pressurized.
 23 They also have to have redundancy in the drain field
 24 as well as the replacement area location designated.
 25 It's required to have a certified operator to help

1 **Exhibit 9 is actually the inspection report that**
 2 **Linda Vecellio did?**
 3 A. That's correct.
 4 **Q. This was after the temporary permit was**
 5 **issued?**
 6 A. Correct.
 7 **Q. At that time had there been an**
 8 **additional tank installed?**
 9 A. No.
 10 **Q. Okay. So what had taken place?**
 11 A. As you see, they've added additional
 12 drain field in compliance with the permit. It gives
 13 evidence of when the tanks were pumped. It gave
 14 minor deficiencies based on a T use instead of a D
 15 box, which helps to give equal distribution, and that
 16 it was deeper than the approvable depth that went
 17 five feet instead of four feet.
 18 **Q. I think I asked you about those**
 19 **deficiencies the last time, so I won't go back into**
 20 **that, but my question is: Do you know if those**
 21 **deficiencies were ever repaired?**
 22 A. They have not been, to my knowledge.
 23 **Q. Again, this is just standard District**
 24 **Seven practice that once a permit is issued and once**
 25 **the work is done pursuant to the permit, it's common**

1 that we don't specifically ask or look for.

2 Q. BY MR. BRUNSON: The way I would
3 understand it, permission is implicitly given by
4 issuing the permit?

5 MR. FULLER: Object as to form.

6 THE WITNESS: We issue the bedrooms, based
7 on bedrooms. If anything else is declared, we would
8 look at that waste. So if it's not declared, then
9 it's not something of immediate concern.

10 Q. BY MR. BRUNSON: Is that something that
11 concerns you in your position with District Seven,
12 the discharge of soft water brine?

13 A. Only if there is, again, C type soils,
14 there's concerns of that.

15 Q. Again, just remind me, what are C type
16 soils?

17 A. Clay soils.

18 Q. In a commercial setting is it a concern
19 that you would ever have?

20 A. If we knew that that was part of the
21 waste flow and we knew that it was a C type soil, we
22 could look at the need for pretreatment.

23 Q. Based on your knowledge of the soil in
24 the Sunnyside subdivision where the septic system is
25 located, is that a C type soil?

1 A. Yes. That's shown, again, on the
2 original page that gives you the -- it says it's
3 gallons per day.

4 Q. Okay. And Mr. Lund was using a
5 20-gallon per day figure. Do you know where he got
6 that?

7 A. No.

8 Q. Have you been out to Printcraft's
9 facility?

10 A. Just to the business offices.

11 Q. Did you ever attempt to classify
12 Printcraft pursuant to this table?

13 A. No.

14 Q. I have, and the one I've looked at is
15 factories. And they have a break room, and so the
16 way I would read that would be, if they don't have
17 any showers, 30 gallons per day per employee. If, in
18 fact, they are a factory, would that be accurate?
19 Would this be the way to determine what their gallons
20 per day should be?

21 A. You said 30 gallons per day.

22 Q. Yeah. 25 plus the five in the
23 cafeteria.

24 MR. FULLER: Is your testimony that they
25 have cafeteria, Counsel?

1 A. No. It is not.

2 Q. What type of soil is it?

3 A. It's an A gravelly soil.

4 Q. Have you ever seen a septic tank or a
5 drain field fail because of soft water brine in your
6 experience?

7 A. I've never specifically looked for that
8 as the reason for failure.

9 Q. All right. While we're looking at the
10 IDAPA, Exhibit 42, let me turn a couple of pages.
11 And this brings up a point regarding how to classify
12 the Printcraft facility.

13 Page 11. Sorry, did I tell you that
14 already? I'm looking on page 11 section 08. And
15 that goes on through page 12 and through page 13.

16 Based on your experience, can you tell
17 me what that table is for?

18 A. Just as it says, it just gives us
19 various gallons per day based on waste water flows,
20 their estimates.

21 Q. So these would be the approval where --
22 let's say if you turn to page 12 under commercial and
23 industrial, there's a category factories. And it
24 says no showers 25 slash employee. Is that gallons
25 per day per employee?

1 MR. BRUNSON: I'm not testifying anything.
2 I'm just asking her --

3 MR. FULLER: You've just explained to her
4 what you've seen out there and what facilities are
5 available. Is there a cafeteria out there?

6 MR. BRUNSON: You can go ahead and answer.

7 THE WITNESS: Are you asking me?

8 Q. BY MR. BRUNSON: No. No. He's not
9 asking you. Don't worry about what he's saying.
10 Your counsel hasn't objected. I'm just asking what
11 your opinion is.

12 MR. FULLER: I would object to the form of
13 the question.

14 THE WITNESS: I don't even know the, you
15 know, the extent of Printcraft Press as to what
16 they --

17 Q. BY MR. BRUNSON: I understand that. My
18 question is more basic than that. Is this the table
19 to look at to determine what the gallons per day
20 should be in a commercial setting?

21 A. This is a start, but if there is a
22 further practice going on, then it would be up to the
23 entity hiring an engineer to help with the estimates.

24 Q. So this is maybe a minimum of what would
25 be required?

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1 A. It's a start to the flows. Anything
2 beyond what is on this list, we ask that they get an
3 engineer to help come up with an estimate.
4 Q. I see. So if they had various
5 industrial processes that may not be included on
6 here, it could add to the permissible gallons per day
7 under IDAPA?
8 A. Correct.
9 Q. I'm going to refer you to something that
10 you said in your previous deposition, and I'll just
11 help you find it. It's on page 159, which is right
12 at the end, actually, line 19 and 20.
13 You testified we're not supposed to --
14 actually, I asked you a question before that. I was
15 asking you regarding Exhibit 30, and you made the
16 statement, quote, we're not supposed to separate out
17 waste. It should have been going into the original
18 system.
19 Am I to understand what you said there
20 is that Printcraft should have been putting all of
21 their waste into the existing septic system?
22 A. Yes.
23 Q. Why is that?
24 A. Because the development's final means of
25 disposal is supposed to take into account all the

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1 going into their septic system, then what goes into
2 that should be looked at according to the IDAPA
3 regulations.
4 Q. BY MR. BRUNSON: Based on your knowledge
5 of the subdivision plan, Printcraft should have been
6 allowed to discharge all of their waste into the
7 system?
8 A. I think their flows were to have been
9 accommodated by the on-site system.
10 Q. Let me ask you this: What size of tank
11 would just your standard three bedroom residence
12 have?
13 A. 1,000-gallon.
14 Q. In your opinion, is a 1,000-gallon tank
15 adequate to cover the needs of an 11-unit industrial
16 park?
17 MR. FULLER: Object as to form.
18 THE WITNESS: I would have to know the flow
19 amounts. It has to be twice the daily flow capacity
20 that the tank accommodates. Knowing that the first
21 two buildings were already needing a 900-gallon --
22 I'd have to look as to what it was if it was a
23 900-gallon or 1,000-gallon tank, then 11 would cause
24 concern.
25 MR. BRUNSON: Could we take a quick break?

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1 flows generated by each of the lots.
2 Q. So by forcing Printcraft to -- or
3 requesting Printcraft to separate out their waste,
4 was Sunnyside violating IDAPA?
5 MR. FULLER: Object as to form.
6 THE WITNESS: Everything from that building
7 is supposed to be disposed of properly. Had there
8 been the requirement of maybe having any pretreatment
9 done prior to it going into that subsurface disposal
10 system, it would still -- the final disposal should
11 be in that septic system. If there's some
12 pretreatment that's potential waste of residue, it
13 would have to be disposed of properly. That may not
14 be into the subsurface disposal.
15 Q. BY MR. BRUNSON: And my question was, if
16 Sunnyside forced Printcraft to separate out their
17 waste, does that constitute a violation of IDAPA,
18 based on your understanding of IDAPA and based on
19 your understanding of the issues of the case?
20 MR. FULLER: Object as to form.
21 THE WITNESS: Depends on what that
22 separation meant. If it was with plumbing code, and
23 they collected it and disposed of it properly with
24 some other means, then I don't see where that would
25 be inappropriate. If they want -- if it was again

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1 I just want to talk to my client, but I think I'm
2 done with my questions.
3 (A recess was taken from 12:18 p.m. to
4 12:27 p.m.)
5 MR. BRUNSON: I have no more questions at
6 this time.
7 MR. CROCKETT: Just for clarification,
8 Mr. Fuller, I presume your further questions would be
9 in the form of redirect examination.
10 MR. FULLER: That is correct.
11 MR. CROCKETT: Thank you.
12
13 EXAMINATION
14 BY MR. FULLER:
15 Q. Do you have all of the exhibits in front
16 of you, Ms. Eager?
17 A. To my knowledge, yes.
18 Q. Does that include the exhibits that were
19 addressed the previous day when you were deposed?
20 Thank you.
21 Can you look at Exhibit 49 for me,
22 please? As I understand your previous questions,
23 your responses to questions, your concerns throughout
24 were with regard to the quantity of flows into the
25 system; is that a fair statement?

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**IDAPA 58
TITLE 01
CHAPTER 03**

58.01.03 - INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES

000. (RESERVED).

001. LEGAL AUTHORITY.

Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code, grants authority to the Board of Environmental Quality to adopt rules and standards to protect the environment and the health of the State, for the installation of cottage site sewage treatment facilities and for the issuance of pollution source permits. Title 39, Chapter 1, Idaho Code, grants to the Director the authority to issue pollution source permits; charges the Director to enforce all laws, rules, regulations, and standards relating to environmental protection and health, and those relating to the storage, handling and transportation of solids, liquids and gases which may cause or contribute to water pollution, and authorizes the Department of Environmental Quality to review for approval the plans and specifications for all proposed waste treatment facilities prior to their construction. (5-7-93)

002. TITLE, SCOPE, CONFLICT AND RESPONSIBILITIES.

01. Title. These rules shall be known as Idaho Department of Environmental Quality Rules, IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules." (5-7-93)

02. Scope. The provisions of these rules establish limitations on the construction and use of individual and subsurface sewage disposal systems and establish the requirements for obtaining an installation permit and an installer's registration permit. These rules apply to every individual and every subsurface blackwaste and wastewater treatment system in Idaho. (5-7-93)

03. Conflict of Rules, Standards, and Ordinances. In any case where a provision of these rules is found to be in conflict with a provision of any state or local zoning, building, fire, safety, or health regulation, standard or ordinance, the provision which, in the judgment of the Director, establishes the higher standard for the promotion and protection of the health and safety of the people, shall prevail. (5-7-93)

04. Responsibilities. (7-1-93)

a. Every owner of real property is jointly and individually responsible for: (10-1-90)

i. Storing, treating, and disposing of blackwaste and wastewater generated on that property. (10-1-90)

ii. Connecting all plumbing fixtures on that property that discharge wastewaters to an approved wastewater system or facility. (10-1-90)

iii. Obtaining necessary permits and approvals for installation of individual or subsurface blackwaste and wastewater disposal systems. (10-1-90)

iv. Abandonment of an individual or subsurface sewage disposal system. (10-1-90)

b. Each engineer, building contractor, individual or subsurface system installer, excavator, plumber, supplier, and every other person, who for compensation shall design, construct, abandon, or provide any system or part thereof, is jointly and individually responsible for compliance with each of these rules that are relevant to that service or product. (5-7-93)

003. DEFINITIONS.

For the purposes of these rules, the following definitions apply. (5-7-93)

01. Abandoned System. A system which has ceased to receive blackwaste or wastewater due to diversion of those wastes to another treatment system or due to termination of waste flow. (10-1-90)

02. **Alternative System.** Any system for which the Department has issued design guidelines or which the Director judges to be a simple modification of a standard system. (10-1-90)
03. **Authorized or Approved.** The state of being sanctioned or acceptable to the Director as stated in a written document. (10-1-90)
04. **Blackwaste.** Human body waste, specifically excreta or urine. This includes toilet paper and other products used in the practice of personal hygiene. (10-1-90)
05. **Blackwater.** A wastewater whose principal pollutant is blackwaste; a combination of blackwaste and water. (10-1-90)
06. **Board.** Idaho State Board Of Environmental Quality. (10-1-90)
07. **Building Sewer.** The extension of the building drain beginning five (5) feet outside the inner face of the building wall. (10-1-90)
08. **Central System.** Any system which receives blackwaste or wastewater in volumes exceeding twenty-five hundred (2,500) gallons per day; any system which receives blackwaste or wastewater from more than two (2) dwelling units or more than two (2) buildings under separate ownership. (10-1-90)
09. **Construct.** To make, form, excavate, alter, expand, repair, or install a system, and, their derivations. (5-7-93)
10. **Director.** The Director of the Idaho Department of Environmental Quality or the Director's designee or authorized agent. (10-1-90)
11. **Existing System.** Any system which was installed prior to the effective date of these rules. (5-7-93)
12. **Expand.** To enlarge any nonfailing system. (10-1-90)
13. **Failing System.** Any system which exhibits one (1) or more of the following characteristics: (10-1-90)
- a. The system does not meet the intent of these rules as stated in Subsection 004.01. (5-7-93)
 - b. The system fails to accept blackwaste and wastewater. (10-1-90)
 - c. The system discharges blackwaste or wastewater into the waters of the State or onto the ground surface. (10-1-90)
14. **Ground Water.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (5-7-93)
15. **High Groundwater Level -- Normal, Seasonal.** High ground water level may be established by the presence of low chroma mottles, actual ground water monitoring or historic records. (5-7-93)
- a. The normal high groundwater level is the highest elevation of ground water that is maintained or exceeded for a continuous period of six (6) weeks a year. (5-7-93)
 - b. The seasonal high groundwater level is the highest elevation of ground water that is maintained or exceeded for a continuous period of one (1) week a year. (5-7-93)
16. **High Water Mark.** The line which the water impresses on the soil by covering it for sufficient periods of time to prevent the growth of terrestrial vegetation. (10-1-90)

17. **Individual System.** Any standard, alternative or subsurface system which is not a central system. (10-1-90)
18. **Install.** To excavate or to put in place a system or a component of a system. (10-1-90)
19. **Installer.** Any person, corporation, or firm engaged in the business of excavation for, or the construction of individual or subsurface sewage disposal systems in the State. (10-1-90)
20. **Large Soil Absorption System.** A large soil absorption system is a subsurface sewage disposal system designed to receive two thousand five hundred (2,500) gallons of wastewater or more per day, including where the total wastewater flow from the entire proposed project exceeds two thousand five hundred (2,500) gallons per day but the flow is separated into absorption modules which receive less than two thousand five hundred (2,500) gallons per day. (5-7-93)
21. **Limiting Layer.** A characteristic subsurface layer or material which will severely limit the capability of the soil to treat or absorb wastewater including, but not limited to, water tables, fractured bedrock, fissured bedrock, excessively permeable material and relatively impermeable material. (10-1-90)
22. **Mottling.** Irregular areas of different color in the soil that vary in contrast, density, number and size. Mottling generally indicates poor aeration and impeded drainage. (5-7-93)
23. **New System.** A system which is or might be authorized or approved on or after the effective date of these rules. (5-7-93)
24. **Nondischarging System.** Any system which is designed and constructed to prevent the discharge of blackwaste or wastewater. (10-1-90)
25. **Permit.** An individual or subsurface system installation permit or installer's registration permit. (10-1-90)
26. **Pollutants.** Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a public nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, agricultural, recreational, aesthetic, or other beneficial uses. (10-1-90)
27. **Public System.** Any system owned by a county, city, special service district, or other governmental entity or Indian tribe having the authority to dispose of blackwaste or wastewater; a municipal wastewater treatment facility. (10-1-90)
28. **Repair.** To remake, reform, replace, or enlarge a failing system or any component thereof as is necessary to restore proper operation. (10-1-90)
29. **Scarp.** The side of a hill, canyon, ditch, river bank, roadcut or other geological feature characterized by a slope of forty-five (45) degrees or more from the horizontal. (10-1-90)
30. **Sewage.** Sewage has the same meaning as wastewater. (10-1-90)
31. **Soil Texture.** The relative proportion of sand, silt, and clay particles in a mass of soil. (10-1-90)
32. **Standard System.** Any system recognized by the Board through the adoption of design and construction regulations. (10-1-90)
33. **Subsurface System.** Any system with a point of discharge beneath the earth's surface. (10-1-90)
34. **Surface Water - Intermittent, Permanent, Temporary.** (7-1-93)

- a. Any waters of the State which flow or are contained in natural or man-made depressions in the earth's surface. This includes, but is not limited to, lakes, streams, canals, and ditches. (10-1-90)
 - b. An intermittent surface water exists continuously for a period of more than two (2) months but not more than six (6) months a year. (10-1-90)
 - c. A permanent surface water exists continuously for a period of more than six (6) months a year. (10-1-90)
 - d. A temporary surface water exists continuously for a period of less than two (2) months a year. (10-1-90)
35. **System.** Beginning at the point of entry physically connected piping, treatment devices, receptacles, structures, or areas of land designed, used or dedicated to convey, store, stabilize, neutralize, treat, or dispose of blackwaste or wastewater. (10-1-90)
36. **Wastewater.** Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, grey water or commercial or industrial pollutants; and sewage. (10-1-90)
37. **Waters of the State.** All the accumulations of water, surface and underground, natural and artificial, public and private or parts thereof which are wholly or partially within, which flow through or border upon the state of Idaho. (10-1-90)
38. **Water Table.** The surface of an aquifer. (10-1-90)

004. GENERAL REQUIREMENTS.

01. **Intent of Rules.** The Board, in order to protect the health, safety, and environment of the people of the state of Idaho establishes these rules governing the design, construction, siting and abandonment of individual and subsurface sewage disposal systems. These rules are intended to insure that blackwastes and wastewater generated in the state of Idaho are safely contained and treated and that blackwaste and wastewater contained in or discharged from each system: (5-7-93)
- a. Are not accessible to insects, rodents, or other wild or domestic animals; (10-1-90)
 - b. Are not accessible to individuals; (10-1-90)
 - c. Do not give rise to a public nuisance due to odor or unsightly appearance; (10-1-90)
 - d. Do not injure or interfere with existing or potential beneficial uses of the waters of the State. (10-1-90)
02. **Compliance with Intent Required.** The Director shall not authorize or approve any system if, in the opinion of the Director, the system will not be (is not) in compliance with the intent of these rules. (5-7-93)
03. **System Limitations.** Cooling water, backwash or backflush water, hot tub or spa water, air conditioning water, water softener brine, groundwater, oil, or roof drainage cannot be discharged into any system unless that discharge is approved by the Director. (10-1-90)
04. **Increased Flows.** Unless authorized by the Director, no person shall provide for or connect additional blackwaste or wastewater sources to any system if the resulting flow or volume would exceed the design flow of the system. (10-1-90)
05. **Failing System.** The owner of any failing system shall obtain a permit and cause the failing

system's repair: (10-1-90)

- a. As soon as practical after the owner becomes aware of its failure; or (10-1-90)
- b. As directed in proper notice from the Director. (10-1-90)

06. Subsurface System Replacement Area. An area of land which is suitable in all respects for the complete replacement of a new subsurface system disposal field shall be reserved as a replacement area. This area will be kept vacant, free of vehicular traffic and free of any soil modification which would negatively affect its use as a replacement disposal field construction site. (10-1-90)

07. Technical Guidance Committee. The Director shall appoint a Technical Guidance Committee composed of three (3) representatives from the seven (7) Health Districts, one (1) representative from the Department of Environmental Quality, one (1) professional engineer licensed in the state of Idaho and one (1) licensed installer. Initially two (2) committee members shall be appointed to each of one (1), two (2) and three (3) year terms. Appointments to vacancies thereafter shall be to three (3) year terms. (12-31-91)

08. Duties of the Technical Guidance Committee. The Committee shall maintain a technical guidance manual which shall be used in the design, construction, alteration, operation, and maintenance of conventional systems, their components and alternatives. The Committee shall review variances at the request of the Director and provide recommendations on such variances. (10-1-90)

09. Technical Guidance Manual for Individual and Subsurface Alternative Sewage Disposal. The manual maintained by the Technical Guidance Committee shall provide state-of-the-art technical guidance on alternative sewage disposal components and systems, soil type determination methodology and other information pertinent to the best management practices of individual and subsurface sewage disposal. (10-1-90)

10. Alternative System. If a standard system as described in these rules cannot be installed on a parcel of land, an alternative system may be permitted if that system is in accordance with the recommendations of the Technical Guidance Committee and is approved by the Director. (5-7-93)

005. PERMIT AND PERMIT APPLICATION.

01. Permit Required. Except as specified in Subsection 005.02 it shall be unlawful for any person to cause or to perform the modification, repair or construction of any individual or subsurface sewage disposal system within the state of Idaho unless there is a valid installation permit authorizing that activity. (12-31-91)

02. Exceptions to Permit Requirement. The activities listed in this subsection may be lawfully performed in the absence of a valid installation permit. They are, however, subject to all other relevant rules and regulations. (10-1-90)

a. Portable nondischarging systems may be installed where needed as temporary blackwater or wastewater systems if they are properly maintained and if they are of a design which has been approved by the Director. (10-1-90)

b. Individual and subsurface systems may be repaired when needed as a result of clogged or broken solid piping or of malfunctions in an electrical or mechanical system. Such repair may not expand the system unless authorized by the Director. (10-1-90)

03. Permit Application. The owner of the system or the owner's authorized representative shall make application to the Director in writing and in a manner or form prescribed by the Director. (10-1-90)

04. Contents of Application. A permit application will be used to help determine if the proposed construction will be in conformance with applicable rules and regulations. Information required in the application may include, but is not limited to: (10-1-90)

- a. The name and address of the owner of the system and of the applicant, if different; (10-1-90)

- b. The legal description of the parcel of land; (10-1-90)
- c. The type of establishment served; (10-1-90)
- d. The maximum number of persons served, number of bedrooms, or other appropriate measure of wastewater flow; (10-1-90)
- e. The type of system; (10-1-90)
- f. The construction activity (new construction, enlargement, repair); (10-1-90)
- g. A scaled or dimensioned plot plan including, if needed, adjacent properties illustrating: (10-1-90)
- i. The location and size of all existing and proposed wastewater systems including disposal field replacement areas; (10-1-90)
 - ii. The location of all existing water supply system features; (10-1-90)
 - iii. The location of all surface waters; (10-1-90)
 - iv. The location of scarps, cuts, and rock outcrops; (10-1-90)
 - v. Land elevations, surface contours, and ground slopes between features of interest; (10-1-90)
 - vi. Property lines, easements, and rights-of-way; and (10-1-90)
 - vii. Location and size of buildings and structures. (7-1-93)
- h. The plans and specifications of the proposed system which include: (10-1-90)
 - i. Diagrams of all system facilities which are to be made or fabricated at the site; (10-1-90)
 - ii. The manufacturer's name and identification of any component approved pursuant to Sections 007 and 009; and (12-31-91)
 - iii. List of materials. (10-1-90)
- i. Soil description and profile, groundwater data, percolation or permeability test results and/or a site evaluation report; (10-1-90)
- j. The nature and quantity of blackwaste and wastewater which the system is to receive including the basis for that estimate; (10-1-90)
- k. Proposed operation, maintenance, and monitoring procedures to insure the system's performance and failure detection; (10-1-90)
- l. Copies of legal documents relating to access and to responsibilities for operation, maintenance, and monitoring; (10-1-90)
- m. A statement from the local zoning or building authority indicating that the proposed system would not be contrary to local ordinances; (10-1-90)
- n. The signature of the owner of the proposed system and, if different, of the applicant; and (10-1-90)
- o. Any other information, document, or condition that may be required by the Director to substantiate that the proposed system will comply with applicable rules and regulations. (10-1-90)

05. Basis for Permit Application Denial. The Director may deny a permit application if in the Director's judgment: (10-1-90)

- a. The application is incomplete, inaccurate, or misleading; (10-1-90)
- b. The system as proposed is not in compliance with applicable rules and regulations; (10-1-90)
- c. The system as proposed would, when put into use, be considered a failing system; (10-1-90)
- d. The design and description of a public system was not made by a professional engineer; (10-1-90)
- e. Public or central wastewater treatment facilities are reasonably accessible. (10-1-90)

06. Notice of Denial. Upon denial of an application the Director shall notify the applicant of the reason for denial. (10-1-90)

07. Issuance of Permit. When, in the opinion of the Director the system as proposed will be in conformance with applicable rules and regulations, the Director shall issue an "Individual and Subsurface System Installation Permit". (10-1-90)

08. Application and Permit Valid for One Year. Unless otherwise stated on the application or permit, it shall become invalid if the authorized construction or activity is not completed and approved within one (1) year of the date of issuance. (10-1-90)

09. Permit Renewal. At the discretion of the Director, a permit may be renewed one (1) or more times upon request by the applicant or owner provided that the request is received by the Director prior to the permit's date of expiration. (10-1-90)

10. Immediate Effect of the Permit. A valid permit authorizes the construction of an individual or subsurface system and requires that the construction be conducted in compliance with plans, specifications, and conditions contained in the approved permit application. Any deviation from the plans, specifications, and conditions is prohibited unless it is approved in advance by the Director. (10-1-90)

11. Cottage Site Facility Certification. A valid permit shall constitute certification and approval for the purposes of Section 39-3611, Idaho Code. (10-1-90)

12. Existing Installation Permits. Individual and subsurface sewage disposal installation permits or other lot-specific approvals for systems issued prior to February 7, 1978, pursuant to Idaho Code Title 39, Chapter 1 and Title 39, Chapter 36, will become invalid one (1) year after written notice is given by the Director notifying the owner or holder of such a permit or approval that the permit or approval will no longer be valid unless construction or installation of the system provided for in the permit or approval is commenced within one (1) year after giving of the notice. This provision does not apply to certificates filed to satisfy a sanitary restriction pursuant to Section 50-1326, Idaho Code. (10-1-90)

13. Abandonment May Be Required. The Director may require as a condition for issuing a permit that the system be abandoned by a specified date or under specific predetermined circumstances. The date or circumstances will be established before the issuance of the permit and be contained in the permit application. These conditions may relate to a specific date, dwelling density, completion of a municipal system or other circumstances relative to the availability of central sewerage system services. (10-1-90)

14. Operation, Maintenance and Monitoring. The Director may require as a condition of issuing a permit, that specific operation, maintenance, and monitoring procedures be observed. Those procedures will be contained in the permit application. (10-1-90)

15. As-Built Plans and Specifications. The Director may require as a condition of issuing a permit, that complete and accurate record drawings and specifications depicting the actual construction be submitted to the

Director within thirty (30) days after the completion of the construction. Alternately, if the construction proceeded in compliance with the approved plans and specifications, a statement to that effect may be submitted. (10-1-90)

16. **Permit Fee.** All applications shall be accompanied by payment of the fee specified in Idaho Department of Health and Welfare Rules, IDAPA 16.05.05, Subsections 110 through 110.02, "Rules Governing Fees for Health Operating Permits, Licenses, and Inspection Services". (5-7-93)

006. INSTALLER'S REGISTRATION PERMIT.

01. **Permit Required.** Every installer shall secure from the Director, an installer's registration permit. Two (2) types of installer permits are available: (5-7-93)

a. A standard and basic alternative system installer's registration permit is required to install all individual systems not listed under Subsection 006.01.b. (5-7-93)

b. A complex alternative system installer's registration permit is required to install evapotranspiration systems, extended treatment systems, lagoon systems, large soil absorption systems, pressure distribution systems, intermittent sand filter, in-trench sand filter, sand mound or other systems as may be specified by the Director. (5-7-93)

02. **Examination.** The initial issuance of the installer's permit shall be based on the completion of an examination, with a passing score of seventy (70) or more, of the applicant's knowledge of the principles set forth in this chapter and the applicable sections of the Technical Guidance Manual. The examination will be prepared, administered and graded by the Director. (5-7-93)

03. **Permits Required Annually.** Registration permits expire annually on the first (1st) day of January and all permits issued thereafter will be issued for the balance of the calendar year. Additionally, at least one (1) refresher course approved by the state of Idaho, Department of Environmental Quality, be attended every three (3) years. (5-7-93)

04. **Contents of Application.** Applications for permits shall be in writing, shall be signed by the applicant or by an officer or authorized agent of a corporation, shall contain the name and address of the applicant, shall indicate whether the permit is to be for installation of standard and basic alternative systems or for installation of standard, basic and complex alternative systems, and shall contain the expiration date of the bond required by Subsection 006.05. (5-7-93)

05. **Bond Required.** At the time of application, all applicants shall deliver to the Director a bond in a form approved by the Director in sum of five thousand dollars (\$5,000) for a standard and basic alternative system installer's registration permit, or in the sum of fifteen thousand dollars (\$15,000) for standard, basic and complex alternative system installer's registration permit. The bond will be executed by a surety company duly authorized to do business in the state of Idaho and must run concurrent with the installer's registration permit to be approved by the Director guaranteeing the faithful performance of all work undertaken under the provisions of the installer's registration permit. Any person who suffers damage as the result of the negligent or wrongful acts of the registrant or by his failure to competently perform any of the work agreed to be done under the terms of the registration permit shall, in addition to other legal remedies, have a right of action in his own name on the bond for all damages not exceeding five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems. The maximum liability of the surety and/or sureties on the bond, regardless of the number of claims filed against the bond, shall not exceed the sum of five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems. (5-7-93)

06. **Exemption.** An installer's permit shall not be required for: (10-1-90)

a. Any person, corporation, or firm constructing a central or municipal subsurface sewage disposal system if that person, corporation, or firm is a licensed public works contractor as provided in Title 54, Chapter 19, Idaho Code, is experienced in the type of system to be installed and is under the direction of a professional engineer licensed in the state of Idaho; or (5-7-93)

- b. An owner installing his own standard or basic alternative system. (5-7-93)

07. **Application Fee.** All applications shall be accompanied by payment of the fee specified in Idaho Department of Health and Welfare Rules, IDAPA 16.05.05, Section 120, "Rules Governing Fees for Health Operating Permits, Licenses, and Inspection Services". (5-7-93)

08. **Grounds for Revocation.** Failure to comply with these rules shall be grounds for revocation of the permit. (5-7-93)

007. **SEPTIC TANKS DESIGN AND CONSTRUCTION STANDARDS.**

01. **Materials.** New septic tanks will be constructed of concrete, or other materials approved by the Director. Steel tanks are unacceptable. (10-1-90)

02. **Construction Requirements.** All septic tanks will be water tight, constructed of sound, durable materials and not subject to excessive corrosion, decay, frost damage or cracking. (10-1-90)

03. **Concrete Septic Tanks.** New concrete septic tanks will at a minimum meet the following requirements: (10-1-90)

a. The walls and floor must be at least two and one-half (2 1/2) inches thick if adequately reinforced and at least six (6) inches thick if not reinforced. (10-1-90)

b. Concrete lids or covers must be at least three (3) inches thick and adequately reinforced. (10-1-90)

c. The floor and at least a six (6) inch vertical portion of the walls of a poured tank must be poured at the same time (monolithic pour). (10-1-90)

d. Wall sections poured separately must have interlocking joints on joining edge. (10-1-90)

e. All concrete outlet baffles must be finished with an asphalt or other protective coating. (10-1-90)

04. **Horizontal Dimension Limit.** No interior horizontal dimension of a septic tank or compartment may be less than two (2) feet. (10-1-90)

05. **Liquid Depth.** The liquid depth shall be at least two and one-half (2 1/2) feet but not greater than five (5) feet. (10-1-90)

06. **Manufactured Tank Markings.** Septic tanks manufactured in accordance with a specified design approved by the Director, will be legibly and indelibly marked with the manufacturer's name or trademark, total liquid capacity and shall indicate the tank's inlet and outlet. (10-1-90)

07. **Minimum Tank Capacities.** (7-1-93)

a. Tanks serving one (1) or two (2) single dwelling units:

MINIMUM CAPACITY PER DWELLING UNIT	
Number of Bedrooms	Minimum Liquid Capacity (Gallons)
1 or 2	900
3 or 4	1,000

For each bedroom over four (4) add two hundred fifty (250) gallons. (10-1-90)

b. Tanks serving all other flows. Septic tank capacity shall be equal to two (2) times the average daily flow as determined from Subsection 007.08. The minimum tank capacity shall be seven hundred and fifty (750) gallons. (12-31-91)

08. Wastewater Flows from Various Establishments in Gallons per Day.

ESTABLISHMENTS	
Single Family Dwelling and Mobile Homes, 3 bedroom. Add/subtract 50 gallons/bedroom	250/Unit
MULTIPLE RESIDENTIAL	
Hotel: With Private Baths Without Private Baths	60/Bedspace 40/Bedspace
Motel: With Kitchenette	40/Bedspace 60/Bedspace
Boarding House: Add for each nonresident	150/Bedspace 25
Rooming House/Bunk House Staff Resident Nonresident	40/Resident 40/Staff 15/Staff
Apartments	250/Unit
INSTITUTIONAL	
Assembly Hall/Meeting House	2/Seat
Church: With Kitchen	3/Seat 7/Seat
Hospital: Kitchen only Laundry only	250/Bedspace 25/Bedspace 40/Bedspace
Nursing Home/Rest Home	125/Bedspace
Day School: Without Showers With Showers With Cafeteria, add Staff-Resident Nonresident	20/Student 25/Student 3/Student 40/Staff 20/Staff
FOOD SERVICE	
Conventional Service: Toilet & Kitchen Wastes Kitchen Wastes	13/Meal 3.3/Meal
Take Out or Single Service	2/Meal
Dining Hall: Toilet & Kitchen Wastes Kitchen Wastes	8/Meal 3.3/Meal

ESTABLISHMENTS	
Drinking Establishment	2/Person
Food Service Employee	15/Employee
COMMERCIAL AND INDUSTRIAL	
Bowling Alley	125/Lane
Laundry - Self Service	50/Wash
Public Transportation Terminal	5/Fare
Service Station	10/Vehicle
Car Wash:	50/Vehicle
1st Bay	1000
Additional Bays	500 each
Shopping Center (No food/laundry)	1/Pkg.Sp.
Theaters (including Concession Stand):	
Auditorium	5/Seat
Drive-in	10/Space
Offices	20/Employee
Factories:	
No Showers	25/Employee
With Showers	35/Employee
Add for Cafeteria	5/Employee
Stores	2/Employee
Public Restrooms	
SEASONAL AND RECREATIONAL	
Fairground (Peak Daily Attend)	1/Person
Stadium	2/Seat
Swimming Pool:	
Toilet & Shower Wastes	10/Person
Parks & Camps (Day Use):	
Toilet & Shower Wastes	15/Person
Roadside Rest Area:	
Toilet & Shower Wastes	10/Person
Toilet Waste	5/Person
Overnight Accommodation:	
Central Toilet	25/Person
Central Toilet & Shower	35/Person
Designated Camp Area:	
Toilet & Shower Wastes	90/Space
Toilet Wastes	65/Space
Seasonal Camp	50/Space
Luxury Cabin	75/Person

ESTABLISHMENTS	
Travel Trailer Park with Sewer & Water Hook-up	125/Space
Construction Camp	50/Person
Resort Camps	50/Person
Luxury Camps	100/Person
Country Clubs Resident Member	100/Member
Add for Nonresident Member	25/Person
Public Restrooms:	
Toilet Wastes	5/Person
Toilet & Shower Wastes	15/Person

(10-1-90)

09. Total Volume. The total volume of a septic tank will at a minimum be one hundred fifteen percent (115%) of its liquid capacity. (10-1-90)

10. Inlets. (7-1-93)

a. The inlet into the tank will be at least four (4) inches in diameter and enter the tank three (3) inches above the liquid level. (10-1-90)

b. The inlet of the septic tank and each compartment will be submerged by means of a vented tee or baffle. (10-1-90)

c. Vented tees or baffles will extend above the liquid level seven (7) inches or more but not closer than one (1) inch to the top of the tank. (10-1-90)

d. Tees should not extend horizontally into the tank beyond two (2) times the diameter of the inlet. (10-1-90)

11. Outlets. (7-1-93)

a. The outlet of the tank will be at least four (4) inches in diameter. (10-1-90)

b. The outlet of the septic tank and each compartment will be submerged by means of a vented tee or baffle. (10-1-90)

c. Vented tees and baffles will extend above the liquid level seven (7) inches or more above the liquid level but no closer than one (1) inch to the inside top of the tank. (10-1-90)

d. Tees and baffles will extend below the liquid level to a depth where forty percent (40%) of the tank's liquid volume is above the bottom of the tee or baffle. For vertical walled rectangular tanks, this point is at forty percent (40%) of the liquid depth. In horizontal cylindrical tanks this point is about thirty-five percent (35%) of the liquid depth. (10-1-90)

e. Tees and baffles should not extend horizontally into the tank beyond two (2) times the diameter of the outlet. (10-1-90)

12. Scum Storage. A septic tank will provide an air space above the liquid level which will be equal to or greater than fifteen percent (15%) of the tank's liquid capacity. For horizontal cylindrical tanks, this condition is met when the bottom of the outlet port is located at nineteen percent (19%) of the tank's diameter when measured from the inside top of the tank. (10-1-90)

13. **Manholes.** Access to each septic tank or compartment shall be provided by a manhole twenty (20) inches in minimum dimension or a removable cover of equivalent size. Each manhole cover will be provided with a corrosion resistant strap or handle to facilitate removal. (10-1-90)

14. **Inspection Ports.** An inspection port measuring at least eight (8) inches in its minimum dimension will be placed above each inlet and outlet. Manholes may be substituted for inspection ports. (10-1-90)

15. **Split Flows.** The wastewater from a single building sewer or sewer line may not be divided and discharged into more than one (1) septic tank or compartment. (10-1-90)

16. **Multiple Tank or Compartment Capacity.** Multiple septic tanks or compartmented septic tanks connected in series may be used so long as the sum of their liquid capacities is at least equal to the minimum tank capacity computed in Subsection 007.07 and the initial tank or compartment has a liquid capacity of more than one-half (1/2) but no more than two-thirds (2/3) of the total liquid capacity of the septic tank facility. (12-31-91)

17. **Minimum Separation Distances Between Septic Tanks and Features of Concern.**

Features of Concern		Minimum Distance to Septic Tank in Feet
Well or Spring or Suction Line	Public Water	100
	Other	50
Water Distribution Line	Public Water	25
	Other	10
Permanent or Intermittent Surface Water		50
Temporary Surface Water		25
Downslope Cut or Scarp		25
Dwelling Foundation or Building		5
Property Line		5
Seasonal High Water Level (Vertically from Top of Tank)		2

(10-1-90)

18. **Installation of Manufactured Tanks.** If written installation instructions are provided by the manufacturer of a septic tank, those instructions relative to the stability and integrity of the tank are to be followed unless otherwise specified in the installation permit of these rules. (5-7-93)

19. **Manhole Extension.** If the top of the septic tank is to be located more than twenty-four (24) inches below the finished grade, manholes will be extended to within eighteen (18) inches of the finished grade. (10-1-90)

20. **Sectional Tanks.** Sectional tanks will be joined in a manner that will insure that the tank is watertight. (10-1-90)

21. **Inlet and Outlet Piping.** Unless otherwise specified in the installation permit, piping to and from a septic tank or dosing chamber, to points three (3) feet beyond the tank excavation shall be of a material approved by the Director. The following materials are required: (5-7-93)

a. ABS schedule forty (40) or material of equal or greater strength piping shall be used to span the excavations for the septic tank and dosing chamber. (5-7-93)

b. ASTM-D-3033 or 3034 plastic pipe may be used to span the septic tank and dosing chamber if the

excavation is compacted with fill material. (5-7-93)

i. The fill material must be granular, clean and compacted to ninety percent (90%) standard proctor density. (5-7-93)

ii. Placement of ASTM-D-3033 or 3034 on undisturbed earth is suitable, but in no installation shall there be less than twelve (12) inches of cover over the pipe. (5-7-93)

22. Effluent Pipe Separation Distances. Effluent pipes shall not be installed closer than fifty (50) feet from a well. (5-7-93)

23. Septic Tank Abandonment. Responsibility of properly abandoning a septic tank shall remain with the property owner. Septic tanks shall be abandoned in accordance with the following: (5-7-93)

a. Disconnection of the inlet and outlet piping; (5-7-93)

b. Pumping of the scum and septage with approved disposal; (5-7-93)

c. Filling the septic tank with earthen materials; or (5-7-93)

d. Physically destroying the septic tank or removing the septic tank from the ground. (5-7-93)

008. STANDARD SUBSURFACE DISPOSAL FACILITY DESIGN AND CONSTRUCTION.

01. Standard Drainfield. A drainfield consisting of an effluent sewer, one (1) or more aggregate filled trenches and a gravity flow wastewater distribution system. These standards will be the basis of acceptable design and configuration. Overall dimensions of a specific facility will depend upon site characteristics and the volume of wastewater. (10-1-90)

02. Site Suitability. The area in which a standard drainfield is to be constructed must meet the conditions stated in this subsection: (10-1-90)

a. Slope. The natural slope of the site will not exceed twenty percent (20%). (10-1-90)

b. Soil types. Suitable soil types must be present at depths corresponding with the sidewalls of the proposed drainfield and at depths which will be between the bottom of the proposed drainfield and any limiting soil layer (effective soil depth).

Design Soil Group	Soil Textural Classification	USDA Field Test Textural Classification	
Unsuitable	Gravel	10 Mesh	
	Coarse Sand	10-35 Mesh	Sand
A	Medium Sand	35-60 Mesh	Sand
	Fine Sand	65-140 Mesh	Sand
	Loamy Sand		Sand
B	Very Fine Sand	140-270 Mesh	Sand
	Sandy Loam		Sandy Loam
	Very Fine Loamy Sand		Sandy Loam
	Loam		
	Silt Loam		Silt Loam

Design Soil Group	Soil Textural Classification	USDA Field Test Textural Classification
C	Silt	Silt Loam
	Clay Loam	Clay Loam
	Sandy Clay Loam	Clay Loam
	Silty Clay Loam	Clay Loam
Unsuitable	Sandy Clay	Clay
	Silty Clay	Clay
	Clay	Clay
	Clay soils with high shrink/swell potential	Clay
	Organic mucks	
	Claypan, Duripan,	
	Hardpan	

(10-1-90)

c. Effective Soil Depths. Effective soil depths, in feet, below the bottom of the drainfield must be equal to or greater than those values listed in the following table.

EFFECTIVE SOIL DEPTHS TABLE			
Site Conditions	Design	Soil	Group
Limiting Layer	A	B	C
Impermeable Layer	4	4	4
Fractured Bedrock, Fissured Bedrock or Extremely Permeable Material	6	4	3
Normal High Groundwater Level	6	4	3
Seasonal High Groundwater Level	1	1	1

(5-7-93)

d. Separation Distances. The drainfield must be located so that the separation distances given be maintained or exceeded according to the following Table:

Feature of Interest	Soil Types All	A	B	C
Public Water Supply	100			
All Other Domestic Water Supplies including Springs and Suction Lines	100			

Feature of Interest	Soil Types All	A	B	C
Water Distribution Lines: Pressure Suction	25 100			
Permanent or Intermittent Surface Water other than Irrigation Canals & Ditches		300	200	100
Temporary Surface Water and Irrigation Canals and Ditches	50			
Downslope Cut or Scarp: Impermeable Layer Above Base Impermeable Layer Below Base		75 50	50 25	50 25
Building Foundations: Crawl Space or Slab Basement	10 20			
Property Line	5			

(5-7-93)

03. Subsurface Disposal Facility Sizing. The size of a subsurface disposal system will be determined by the following procedures: (10-1-90)

a. Daily flow estimates should be determined in the same manner as are flow estimates for septic tank sizing in Subsection 007.08. (5-7-93)

b. The total required absorption area is obtained by dividing the estimated daily flow by a value below.

Design Soil Group	A	B	C
Absorption Area - Gallons/Square Foot/Day	1.0	0.5	0.2

(10-1-90)

c. Required Area. The size of an acceptable site must be large enough to construct two (2) complete drainfields in which each are sized to receive one hundred percent (100%) of the design wastewater flow. (10-1-90)

04. Standard Subsurface Disposal Facility Specifications. The following table presents additional design specifications for new subsurface sewage disposal facilities.

SUBSURFACE DISPOSAL FACILITY TABLE	
Item	All Soil Groups
Length of Individual Distribution Laterals	100 Feet Maximum
Grade of Distribution Laterals and Trench Bottoms	Level
Width of Trenches	1 Foot Minimum 6 Feet Maximum

SUBSURFACE DISPOSAL FACILITY TABLE	
Item	All Soil Groups
Depth of Trenches	2 Feet Minimum 4 Feet Maximum
Total Square Feet of Trench	1500 Sq.ft. Max.
Undisturbed Earth Between Trenches	6 Feet Minimum
Undisturbed Earth Between Septic Tank and Trenches	6 Feet Minimum
Depth of Aggregate:	
Total	12 In. Minimum
Over Distribution Laterals	2 In. Minimum
Under Distribution Laterals	6 In. Minimum
Depth of Soil Over Top of Aggregate	12 In. Minimum

(10-1-90)

05. Wastewater Distribution. Systems shall be installed to maintain equal or serial effluent distribution. (10-1-90)

06. Excavation. Trenches will not be excavated during the period of high soil moisture content when that moisture promotes smearing and compaction of the soil. (10-1-90)

07. Soil Barrier. The aggregate will be covered throughout with untreated building paper, a synthetic filter fabric (geotextile), a three (3) inch layer of straw or other acceptable permeable material. (10-1-90)

08. Aggregate. The trench aggregate shall be crushed rock, gravel, or other acceptable, durable and inert material which is, free of fines, and has an effective diameter from one-half (1/2) to two and one-half (2 1/2) inches. (10-1-90)

09. Impermeable Surface Barrier. No treatment area trench or replacement area shall be covered by an impermeable surface barrier, such as tar paper, asphalt or tarmac or be used for parking or driving on or in any way compacted and shall be adequately protected from such activities. (5-7-93)

10. Standard Absorption Bed. Absorption bed disposal facilities may be considered when a site is suitable for a standard subsurface disposal facility except that it is not large enough. (10-1-90)

a. General Requirements. Except as specified in this section, rules and regulations applicable to a standard subsurface disposal system are applicable to an absorption bed facility. (10-1-90)

b. Slope Limitation. Sites with slopes in excess of eight percent (8%) are not suitable for absorption bed facilities. (10-1-90)

c. Vehicular Traffic. Rubber tired vehicles must not be driven on the bottom surface of any bed excavation. (10-1-90)

d. Distribution Lateral Spacing. Distribution laterals within a bed must be spaced on not greater than six (6) feet centers nor may any sidewall be more than three (3) feet from a distribution lateral. (10-1-90)

11. Seepage Pit. Seepage pit disposal facilities may be used on a case by case basis within the boundaries of District Health Department Seven when an applicant can demonstrate to the district director's satisfaction that the soils and depth to ground water are sufficient to prevent ground water contamination. The district director shall document all such cases. (4-2-91)L

a. General Requirements. Except as specified in Subsection 008.11.b., rules and regulations applicable to a standard subsurface disposal system are applicable to a seepage pit. (12-31-91)

b. Other conditions for approval, sizing and construction will be as provided for in the seepage pit section of the Technical Guidance Manual for Individual and Subsurface Sewage Disposal, except that the site size restriction in condition two (2) of the Conditions for Approval will not apply. (10-1-90)

12. Failing Subsurface Sewage Disposal System. If the Director determines that the public's health is at risk from a failed septic system and that the replacement of a failing subsurface sewage disposal system cannot meet the current rules and regulations, then the replacement system must meet the intent of the rules and regulations by utilizing a standard subsurface sewage disposal design or alternative system design as specified by the Director. (5-7-93)

009. OTHER COMPONENTS.

01. Design Approval Required. Commercially manufactured blackwaste and wastewater treatment and storage components may not be used in the construction of a system unless their design is approved by the Director. (10-1-90)

02. Plan and Specification Submittal. Plans and specifications for all commercially manufactured individual and subsurface treatment and storage components will be submitted to the Director for approval. Plans and specifications will show or include as requested by the Director, detailed construction drawings, capacities, structural calculations, list of materials, evidence of stability and durability, manufacturers installation, operation and maintenance instructions, and other relevant information. (10-1-90)

03. Effect of Design Approval. The Director may condition a design approval by specifying circumstances under which the component must be installed, used, operated or maintained. (10-1-90)

04. Notice of Design Disapproval. If the Director is satisfied that the component described in the submittal may not be in compliance with or may not consistently function in compliance with these rules the Director will disapprove the design as submitted. The manufacturer or distributor submitting the design for approval will be notified in writing of the disapproval and the reason for that action. (5-7-93)

010. VARIANCES.

01. Technical Allowance. The Director may make a minor technical allowance to the dimensional or construction requirements of these rules for a standard system if: (5-7-93)

a. The allowance will not affect adjacent property owners or the public at large; (10-1-90)

b. The allowance will not violate the conditions of Subsection 004.01; and (12-31-91)

c. The allowance will not be in conflict with any other rule, regulation, standard, or ordinance. (10-1-90)

d. The allowance to a dimensional requirement is not more than ten percent (10%) of the requirements of these rules unless otherwise provided for in the Technical Guidance Manual. (5-7-93)

02. Petition for Variance. If a petition of variance to these rules is desired, a request for a variance may be filed with the Director. The petition shall contain the following: (10-1-90)

a. A concise statement of the facts upon which the variance is requested including a description of the intended use of the property, the estimates of the quantity of blackwaste or wastewater to be discharged, and a description of the existing site conditions; (10-1-90)

b. A concise statement of why the petitioner believes that compliance with the provision from which

variance is sought would impose an arbitrary or unreasonable hardship, and of the injury that the grant of the variance would impose on the public; and (10-1-90)

c. A clear statement of the precise extent of the relief sought. (10-1-90)

03. Public Notice. At the time of filing a petition evidence shall also be submitted that: (10-1-90)

a. A notice has appeared in the local newspaper advising the public of the request for variance; (10-1-90)

b. All property owners within three hundred (300) feet of the affected site have been notified; and (10-1-90)

c. Such notices to the public have been made fifteen (15) days prior to the filing of the petition. (10-1-90)

04. Objections to Petition. Any person may file with the Department, within twenty-one (21) days after the filing of the petition, a written objection to the grant of the variance. A copy of such objection shall be provided by the Department to the petitioner. (10-1-90)

05. Investigation and Decision. After investigating the variance petition and considering the views of persons who might be adversely affected by the grant of the variance, the Director shall, within sixty (60) days after the filing of the petition, make a decision as to the disposition of the petition. The decision, a copy of which shall be served on the petitioner, shall include: (10-1-90)

a. A description of the efforts made by the Director to investigate the facts as alleged and to ascertain the views of persons who might be affected, and a summary of the views so ascertained; (10-1-90)

b. A statement of the degree to which, if at all, the Director disagrees with the facts as alleged in the petition; (10-1-90)

c. Allegations of any other facts believed relevant to the disposition of the petition; and (10-1-90)

d. The Director's decision. (10-1-90)

06. Limitations on Decision. No technical allowance or variance shall be granted unless: (10-1-90)

a. Adequate proof is shown by the petitioner that compliance would impose an arbitrary or unreasonable hardship; (10-1-90)

b. The technical allowance or variance rendered is consistent with the recommendations of the Technical Guidance Committee or the Technical Guidance Manual in use at the time of the petition; and (10-1-90)

c. The Director has determined that the approval of the technical allowance or variance will not have an adverse impact on the public health or the environment. (10-1-90)

011. INSPECTIONS.

01. One or More Inspections Required. Such inspection as are necessary to determine compliance with any requirement or provision of these rules shall be required by the Director. (5-7-93)

02. Duty to Uncover. The permittee shall, at the request of the Director, uncover or make available for inspection any portion or component of an individual or subsurface sewage disposal system which was covered or concealed in violation of these rules. (5-7-93)

03. Advance Notice by Permittee. If an inspection requires some type of preparation, such as test hole excavation or partial construction of the system, the applicant or permittee will notify the Director at least forty-eight

(48) hours in advance, excluding weekends and holidays, before the time preparation will be completed. (10-1-90)

04. **Substantiating Receipts and Delivery Slips.** The permittee shall upon request by the Director provide copies of receipts, delivery slips or other similar documents to substantiate the origin, quality, or quantity of materials used in the construction of any individual or subsurface system. (10-1-90)

012. **VIOLATIONS AND PENALTIES.**

01. **Failure to Comply.** All individual and subsurface sewage disposal systems shall be constructed and installed according to these rules. Failure by any person to comply with the permitting, licensing, approval, installation, or variance provisions of these rules shall be deemed a violation of these rules. (5-7-93)

02. **System Operation.** No person shall discharge pollutants into the underground water of the state of Idaho through an individual or subsurface sewage disposal system unless in accordance with the provisions of these rules. (5-7-93)

03. **Violation a Misdemeanor.** Pursuant to Section 39-117, Idaho Code, any person who willfully or negligently violates any of the provisions of these rules shall be guilty of a misdemeanor. (5-7-93)

013. **LARGE SOIL ABSORPTION SYSTEM DESIGN AND CONSTRUCTION.**

01. **Site Investigation.** A site investigation for a large soil absorption system by a soil scientist and/or hydrogeologist may be required by the Director for review and approval and shall be coordinated with the Director. Soil and site investigations shall conclude that the effluent will not adversely impact or harm the waters of the State. (5-7-93)

02. **Installation Permit Plans.** Installation permit application plans, as outlined in Subsection 005.04, for a large soil absorption system submitted for approval shall include provisions for inspections of the work during construction by the design engineer or his designee and/or by the Director. (5-7-93)

03. **Module Size.** The maximum size of any subsurface sewage disposal module shall be ten thousand (10,000) gallons per day. Developments with greater than ten thousand (10,000) gallons per day flow shall divide the system into absorption modules designed for ten thousand (10,000) gallons per day or less. (5-7-93)

04. **Standard Large Soil Absorption System Design Specifications.** (5-7-93)

a. All design elements and applications rates shall be arrived at by sound engineering practice and shall be provided by a professional engineer licensed by the state of Idaho and specializing in environmental or sanitary engineering. (5-7-93)

b. Within thirty (30) days of system installation completion the design engineer shall provide either as-built plans or a certificate that the system has been installed in substantial compliance with the installation permit application plans. (5-7-93)

c. **Effective Soil Depths.** Effective soil depths, in feet, below the bottom of the absorption module to the site conditions must be equal to or greater than the following table:

TABLE -- EFFECTIVE SOIL DEPTHS			
Site Conditions	Design	Soil	Group
Limiting Layer	A	B	C
Impermeable Layer	8	8	8
Fractured Bedrock, Fissured Bedrock or Extremely Permeable Material	12	8	6

TABLE -- EFFECTIVE SOIL DEPTHS			
Site Conditions	Design	Soil	Group
Normal High Groundwater Level	12	8	6
Seasonal High Groundwater Level	2	2	2

(5-7-93)

d. Separation Distances. The disposal area absorption module must be located so that the following separation distances given, in feet, are maintained or exceeded as outlined in the following table:

TABLE -- SEPARATION DISTANCES			
Feature of Interest	Design	Soil	Group
	A	B	C
All Domestic Water Supplies			
Sewage Volume - 2,500-5,000 GPD	250	200	150
Sewage Volume - 5,000-10,000 GPD	300	250	200
Property Lines			
Sewage Volume - 2,500-5,000 GPD	50	50	50
Sewage Volume - 5,000-10,000 GPD	75	75	75
Building Foundations - Basements			
Sewage Volume - 2,500-5,000 GPD	50	50	50
Sewage Volume - 5,000-10,000 GPD	75	75	75
Downslope Cut or Scarp			
Impermeable Layer - Below Base	100	50	50
Separation Distance - Between Modules	12	12	12

(5-7-93)

e. No large soil absorption system shall be installed above a downslope scarp or cut unless it can be demonstrated that the installation will not result in effluent surfacing at the cut or scarp. (5-7-93)

f. A minimum of two (2) disposal systems will be installed, each sized to accept the daily design flow, and a replacement area equal to the size of one (1) disposal system will be reserved. (5-7-93)

g. The vertical and horizontal hydraulic limits of the receiving soils shall be established and flows shall not exceed such limits so as to avoid hydraulically overloading any absorption module and replacement area. (5-7-93)

h. The distribution system must be pressurized with a duplex dosing system. (5-7-93)

i. A geotextile filter fabric shall cover the aggregate. (5-7-93)

j. An in-line effluent filter between an extended treatment system or lagoon system and the large soil absorption area shall be installed. (5-7-93)

- k. Observation pipes shall be installed to the bottom of the drainrock throughout the drainfield (5-7-93)
- l. Pneumatic tired machinery travel over the excavated infiltrative surface is prohibited. (5-7-93)
- m. The drainfield disposal area shall be constructed to allow for surface drainage and to prevent ponding of surface water. Before the system is put into operation the absorption module disposal area shall be seeded with typical lawn grasses and/or other appropriate shallow rooted vegetation. (5-7-93)
- 05. **Large Septic Tanks.** Large Septic Tanks shall be constructed according to Section 007, except as outlined in this Subsection: (5-7-93)
 - a. Length to width ratios shall be maintained at least at a three to one (3:1) ratio. (5-7-93)
 - b. Tank inlet shall allow for even distribution of the influent across the width of the tank. (5-7-93)
 - c. The width to liquid depth ratio shall be between one to one (1:1) and two and one-quarter to one (2.25:1). (5-7-93)
- 06. **Monitoring and Reporting.** Before an installation permit is issued, a monitoring and reporting plan shall be approved by the Director and shall contain the following minimum criteria: (5-7-93)
 - a. Monthly recording and inspection for ponding in all observation pipes. (5-7-93)
 - b. Monthly recording of influent flows based on lapse time meter and/or event meter of the dosing system (5-7-93)
 - c. Monthly recording of groundwater elevation measurements at all monitoring wells if high seasonal groundwater is within fifteen (15) feet of the ground surface. (5-7-93)
 - d. Semi-annual groundwater monitoring at all monitoring wells. (5-7-93)
 - e. Monitoring shall conform to the requirements of all federal, state, and local rules and regulations. (5-7-93)
 - f. An annual "Large Soil Absorption System Report" shall be filed with the Director no later than January 31 of each year for the last twelve (12) month period and shall include section on operation, maintenance and monthly and annual monitoring data. (5-7-93)
- 07. **Operation and Maintenance.** Before an installation permit is issued, an operation and maintenance plan shall be approved by the Director and shall contain the following minimum criteria: (5-7-93)
 - a. Annual or more frequent rotation of the disposal systems, and whenever ponding is noted. (5-7-93)
 - b. A detailed operation and maintenance manual, fully describing and locating all elements of the system and outlining maintenance procedures needed for operation of the system and who will be responsible for system maintenance, shall be submitted to the Director prior to system use. (5-7-93)
 - c. A maintenance entity shall be specified to provide continued operation and maintenance. Approval of the entity shall be made by the Director prior to issuance of an installation permit. (5-7-93)
- 014. -- 995. (RESERVED).

996. **ADMINISTRATIVE PROVISIONS.**

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

997. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Department of Environmental Quality." (3-15-02)

998. INCLUSIVE GENDER AND NUMBER.

For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate (12-31-91)

999. SEVERABILITY.

The rules of this manual are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of the manual. (5-7-93)

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DISTRICT SEVEN HEALTH DEPARTMENT
APPLICATION FOR SEWAGE DISPOSAL PERMIT

Permit # 1006089

Receipt# 61664

Receipt#

Commercial, Industrial, Recreational, Institutional (This is not a permit to install)

Owner of system: Sunny Side Industrial Park LLC Phone # 529-9891

Mailing Address of Owner: 3655 Professional way City: IF Zip: 93406
(Current Address)

Location of actual system:

Legal Description: 1/4 Section. _____ Section _____ Township _____ Range _____
Subdivision Name if applicable: _____ Div. _____ Lot _____ Block _____
Address: _____ City _____ Zip _____

Directions to property: _____

Constructional Activity: New Construction () Enlargement () Replacement (X)
Lot Size: _____ acres. Water Supply: Private Well () Shared Well () Public System ()

Wastewater Flow Information: Maximum gallons per day of waste being disposed of. _____
Number of persons served _____ Grease traps? _____ French drains? _____
Type wastes being disposed of. _____

Proposed Disposal System: (please circle 1 only)

Standard or Basic Alternative Systems: Trench Gravelless Trench Pit Privy Vault Privy
Extra Drainrock Trench Absorption Bed Seepage Pit Capping Fill Trench Steep Slope
Composting Toilet Incinerator Toilet Sand Filter-Intrench Holding Tank

Complex Alternative System: Evapotranspiration Experimental Extended Treatment Package
Large Soil Absorption System Lagoon Pressure Distribution Systems Sand Filter- Intermittent
Recirculating Gravel Filter Sand Mound Two Cell Infiltrative *Note* Current rules require you to hire
a septic installer that has a complex installer license to install a complex systems. A homeowner cannot install complex
systems.

Central System: *Note* Required for any system which receives wastewater in volumes exceeding 2,500 gallons
per day and any system which receives wastewater from more than 2 dwelling units or more than 2 buildings under
separate ownership.

I certify that municipal sewage facilities are not reasonably accessible. I understand that if this system is constructed by
anyone other than owner, a licensed installer must install it. I understand that the system must be inspected and approved
prior to final cover. I understand this is an application only and that it is necessary to have a permit before construction
can begin. *Note* Once the permit has been issued, no changes can be made without prior approval from District
Seven Health Department.

Is Owner Installing? _____

I am the: Homeowner () Owner's authorized representative: Installer (X) license number _____ Contractor ()

I hereby authorize access to this property for the purpose of conducting an on-site evaluation
Signed By: X Kelly Day - Evaluation Date: 6-29-06

ON-SITE EVALUATION ON REVERSE SIDE

ON-SITE EVALUATION

Date(s) On-Site Evaluations Conducted.
Travel Time associated with evaluation.
Inspection Time associated with evaluation.

CURRENT LAND USE:

ENGINEERING PLAN NEEDED:	Yes	No
OPERATION AND MAINTENANCE MANUAL NEEDED:	Yes	No
MONITORING PLANS NEEDED:	Yes	No
WASTE WATER CHARACTERIZATION NEEDED:	Yes	No
P & Z or COUNTY APPROVAL NEEDED:	Yes	No

SITE SUITABILITY:

Slope: Does slope prohibit installation of proposed system? Yes No.

Soil Types:

Based on SCS maps.	Type	A	B	C	Unacceptable
--------------------	------	---	---	---	--------------

Based on Engineering Report.	Type	A	B	C	Unacceptable
------------------------------	------	---	---	---	--------------

Based on Test Hole.	Type	A	B	C	Unacceptable
---------------------	------	---	---	---	--------------

Test Hole Information:

---, Depth of Test hole. _____

Predominant soil type observed. _____

Bedrock encountered. _____

Any ground water encountered. _____

Other concerns. _____

Effective Soil Depth: Has sufficient soil depth below bottom of proposed system to meet rules? Yes No

Depth to nearest Groundwater: _____ Depth to nearest impermeable layer: _____

Separation Distances: (Property has sufficient area for system and replacement to meet all separation requirements?)

Well location (owners property)	Yes	No	Nearest neighbor's well	Yes	No
1					
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100					

Water Distribution lines	Yes	No	Downslope Cut or Scarp	Yes	No
--------------------------	-----	----	------------------------	-----	----

Temporary Surface Waters	Yes	No	Property lines.	Yes	No

Permanent or Intermittent Surface Water Yes No.

PLOT PLAN: (Show proposed building sites, well location, septic site, replacement area, any surface waters, property lines, and utilities if known.)

Comments: _____

y EHS: _____

District 7 Health Department

ENVIRONMENTAL HEALTH SECTION

BOHNEVILLE 254 E Street Idaho Falls ID 83402 208-523-5382 FAX: 208-528-6537	CUSTER/LEWIS 801 Monroe Salmon ID 83467 208-756-7122 FAX: 208-756-6600	PRESMONT 15 S 2nd W St Anthony ID 83445 208-624-7565 FAX: 208-624-0954	TRITON 139 Valley Centre Dr Driggs ID 83422 208-354-3220 FAX: 208-354-2224	JEFFERSON/CLARK 180 Community Lane Rigby ID 83442 208-745-7297 FAX: 208-745-8151	MADISON 114 N 3rd E Rexburg ID 83440 208-356-3239 FAX: 208-356-4496
--	---	---	---	---	--

SEPTIC PERMIT INFORMATION SHEET

FEES:

\$ 110.00	Application Fee (Application fee may be paid separately if type system is unknown, or may be included with permit fee.)
\$ 90.00	Permit, Standard and Basic Alternative Systems (Total Price of Permit \$ 200.00)
\$ 140.00	Permit, Complex Systems (Total Price of Permit \$ 250.00)
\$ 140.00	Permit, Large Systems (Total Price of Permit \$ 250.00)
\$ 70.00	Site Evaluations. Evaluation of property when permit is not requested (i.e., for potential buying of property). The fee may be credited toward the permit fee if requested within one (1) year.

PROCESS:

1. Submit application for permit: Obtain and completely fill out application, including a plot plan. Applications cannot be processed without payment of fee. No payments can be taken in the field.
2. Schedule site evaluation: Environmental Health Specialist must go on-site in order to evaluate the application and to assess the situation before issuing the permit. (A representative must meet the EHS at the site to answer any questions.) (Test holes may be required to determine soil type, limiting layer, or water level, etc.) Plan on a minimum of four to five working days for processing of application.
3. Permit Issuance: When permit is ready to issue, applicant will be called to come to the office to sign permit. The permit can be used to get building permit from Planning and Zoning. A copy of the permit should be given to licensed installer who will then be able to install system. (The permit is valid for one year only. It can be renewed prior to the anniversary date at an additional cost (\$40.00).)
4. Construction of septic system: When licensed installer has copy of permit, construction can begin anytime thereafter. System must be installed in accordance with issued permit. Any changes must be approved by District Seven Health Department.
5. Final Inspection Necessary: It is necessary to have the system inspected by an Environmental Health Specialist prior to covering in order to determine if system was installed in accordance with issued permit. It is the owner's or installer's responsibility to call for final inspection. Systems covered prior to final inspection will be required to be uncovered for final inspection.

THINGS TO REMEMBER:

1. Septic systems **MUST** be installed by a licensed installer. (List of installers can be obtained from your local district health department office.) Homeowners can only install their own septic system if it is a standard system.
2. No changes to the system specifications stated on the permit can be made without prior approval from District Seven Health Department.
3. Septic systems (tank and drainfield) **MUST BE INSPECTED PRIOR TO COVERING.**
4. If the system is not inspected prior to covering, the installer or owner will be asked to uncover the system for inspection. This may cause more expense as system may become damaged if disturbed.

USE TIME:

1. Avoid unnecessary delays by filling out the application form completely. Be sure to include a mailing address and phone number of the owners, and, if applicable, a phone number of the contact person (Builder and/or installer).
2. **District Seven Health Department requires 24 hours notice to schedule an inspection.**

I have received, read, and
understand the above information.

Signed: _____

Date: _____

1137

6-29-06

6/29/06

FAX 522-3187

SUNNYSIDE IND. PARK

$$60 \text{ EMP.} - \text{OFFICE} \times 20 \text{ gpd} = 1200$$

$$\text{AI SOIL} = \frac{1200}{1.2} = 1000\#$$

$$40\% \text{ REDUCTION FOR INFILTRATORS} = 600\# \div 3'$$

200' LENGTH

32 INFILTRATORS

68.75' (11) INFIL.

68.75' (12)

68.5' (10)

EXIST SEPTIC TANK

[Signature]

1133

*Wrong application rate, should

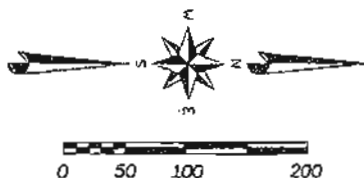
RECEIVED JUN 29 2006

SUNNYSIDE INDUSTRIAL AND PROFESSIONAL PARK

SEWER PLAN

BONNEVILLE COUNTY, IDAHO

PART OF THE N.W. 1/4 OF SECTION 36, T. 2 N., R. 37 E.B.M.

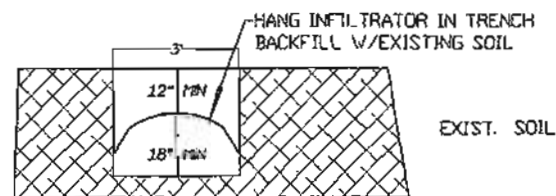


GENERAL NOTES:

1. ALL CONSTRUCTION AND MATERIALS SHALL BE IN ACCORDANCE WITH THE LATEST RULES AND REGULATIONS OF THE IDAHO DEPT OF ENVIRONMENTAL QUALITY AND DISTRICT SEVEN HEALTH DEPT.

DESIGN CALCULATIONS:

TOTAL FLOW = $124 \times 20 \text{ GPD/EMPL} = 2480 \text{ GPD}$
SOIL TYPE = A1
APPLICATION RATE = 1.2 GPD/SF
40% REDUCTION FOR INFILTRATORS
MIN. ABSORPTION AREA = $2480 / 1.7 = 1460 \text{ S.F.}$
MIN. TRENCH LENGTH = $1460 / 3 = 487 \text{ FEET}$



INFILTRATOR TRENCH DETAIL

PLAINTIFF'S
EXHIBIT

44 (PARTIAL)

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS, INC., an Idaho
corporation,

Plaintiff,

vs.

SUNNYSIDE PARK UTILITIES, INC., an
Idaho corporation; SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an Idaho
corporation; SUNNYSIDE INDUSTRIAL AND
PROFESSIONAL PARK, LLC, an Idaho
limited liability company; DOYLE BECK,
an individual; and KIRK WOOLF, an
individual,

Defendants.

SUNNYSIDE PARK UTILITIES, INC., an
Idaho corporation,
Counterclaimant,

vs.

PRINCRAFT PRESS, INC., an Idaho
corporation; and TRAVIS WATERS, an
individual,

Counterdefendants.

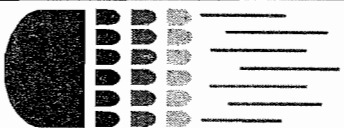
Case No.

CV-06-7097

DEPOSITION OF ROBERT C. STARR

Tuesday, October 21, 2008, 10:00 a.m.

Idaho Falls, Idaho



T&T REPORTING

CERTIFIED SHORTHAND REPORTERS

COPY

REPORTED BY:

Sandra D. Terrill,
RPR, CSR

1140

PREPARED FOR:

MR. GAFFNEY

EXHIBIT

D

Post Office Box 51020

IDAHO FALLS, IDAHO 83405

208.529.5491 • FAX 208.529.5496 • 1.800.529.5491

DEPOSITION OF ROBERT C. STARR - 10/21/08

SHEET 30 PAGE 117

1 Q. Would you have -- I'm sorry.
2 A. So based on that, I guess, I would infer
3 that this number is calculated. It's not a number
4 that -- you know, that somebody said, oh, well, we're
5 going to use 3 gallons a day as the rate because
6 that's a number that I have some basis for assuming.
7 So to me that looks like a calculated value.
8 Q. Or an actual value?
9 A. What's an actual value?
10 Q. Well, it says gallons per person per
11 day. Did you actually make -- did you make any
12 actual measurements of any flows --
13 A. No.
14 Q. -- in doing any of your report
15 preparation?
16 A. No.
17 Q. None of your calculations anywhere
18 involve an actual measurement?
19 A. I have not measured flow at Sunnyside.
20 Q. Or any of its occupants?
21 A. Correct.
22 Q. Or the septic system?
23 A. Correct.
24 Q. Or the leach field?
25 A. That's right.

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1 Q. Is there a way to obtain an actual
2 number, an exact number for the actual volume of
3 flow?
4 A. The actual volume of flow where?
5 Q. Into the septic system.
6 A. Yes.
7 Q. How would you do that?
8 A. I would use a properly installed and
9 calibrated and maintained flow meter.
10 Q. Did you inquire if such a flow meter was
11 installed on the septic system?
12 A. I asked if any flow records existed
13 prior to failure. I was told that, at least, my
14 client and his client were not aware of any.
15 Apparently -- water flow in the potable water system,
16 apparently that was measured, but only after the
17 subject tank failure. So my understanding is that
18 there are no flow records prior to failure.
19 Q. Did you inquire of anyone besides your
20 client, Mr. Schuster, and his client, Printcraft
21 Press?
22 A. No. 114
23 Q. I'm still on page 5 of your report,
24 paragraph 3. You state as your opinion that the
25 daily wastewater flow rate for employees in

PAGE 119

1 office-type operations required by the State of Idaho
2 for designing septic systems is 20 gallons per person
3 per day. Is it your opinion that each person in the
4 subdivision was discharging 20 gallons per day on
5 average?
6 A. I would assume that that is a good
7 estimate.
8 Q. Why?
9 A. Well, the State of Idaho has the -- I
10 mean, they have, based on their experience with
11 permitting and inspecting septic systems for a
12 variety of types of facilities, have selected design
13 wastewater flow rates for different types of
14 facilities. In this particular case they recommend
15 20 gallons per person per day for people in
16 office-type environments. So I guess I'm willing to
17 defer to the state.
18 Q. Do you know how the state made the
19 determination?
20 A. No.
21 Q. Did you consider Printcraft Press to be
22 an office environment?
23 A. It's -- I guess of the categories listed
24 in the technical guidance manual, it's closer to an
25 office environment than, I think, anything else.

PAGE 120

1 Q. You've never participated in designing a
2 septic system?
3 A. That's correct.
4 Q. Have you participated in designing any
5 kind of a water treatment or waste flow treatment
6 system?
7 A. Not for sanitary wastewater.
8 Q. Am I correct that you can't know what
9 the actual flow into the septic system is going to be
10 before occupants and owners start discharging into
11 the septic system?
12 A. I think that would be predicting the
13 future.
14 Q. Okay. And you've never done any actual
15 measurements of anything to do with Sunnyside sewer
16 system?
17 A. Correct.
18 Q. In that same paragraph you indicate that
19 the daily wastewater flow rate is 1,760 gallons per
20 day. Is this an exact number or is this also an
21 estimate?
22 A. This is a calculation based on the two
23 values that are cited above, 88 people working in the
24 park and the 20 gallons per day per person
25 recommended -- or required by the State of Idaho to

1 use for designing systems.
 2 Q. Is it your opinion that the Sunnyside
 3 Utilities septic system successfully operated at a
 4 flow rate of 1,760 gallons per day, even though that
 5 was greater than both the design flow rate and the
 6 permitted flow rate?
 7 A. Since there was no ponding reported
 8 above the leach field and my interpretation is that,
 9 yes, the leach field was able to infiltrate 1,760
 10 gallons per day.
 11 Q. Turn with me to page 6.
 12 A. Let's take a break.
 13 MR. FULLER: Sure.
 14 (A recess was taken from 2:21 p.m. to
 15 2:28 p.m.)
 16 Q. BY MR. FULLER: I want to ask just one
 17 follow-up on Exhibit *010. You had indicated that
 18 you took the five pictures at the beginning of this
 19 exhibit on what day? Were these the ones taken in
 20 March or were these taken after March?
 21 A. No. This was early April.
 22 Q. In early April?
 23 MR. GAFFNEY: Those are the ones you got
 24 excluded.
 25 Q. BY MR. FULLER: Did you take any other

1 would calculate using the number of people in the
 2 park who were providing waste to that system other
 3 than people at Printcraft and the Idaho required
 4 design number.
 5 So if you're doing things in accordance
 6 with the State of Idaho's regulations, you would use
 7 the number of 1,760 gallons per day for sizing the
 8 septic system. In fact, that septic system is
 9 designed and permitted for only, what, 300 gallons a
 10 day. So it looks to me like the -- like the quantity
 11 of wastewater that would be going into that system
 12 even without Printcraft is almost six times what the
 13 system was designed for and permitted for.
 14 Q. But this 1,760 gallons per day is simply
 15 a design rate; isn't that correct? This isn't an
 16 actual measurement of anything?
 17 A. It's not a measured value.
 18 Q. Right. In fact, your report isn't based
 19 on any actual flow rates, it's based solely on design
 20 rates; isn't that correct?
 21 A. I have not measured flow rates so it is
 22 based on recommended design -- recommended or
 23 required design values.
 24 Q. All of which are averages?
 25 A. I don't know that they're averages.

1 pictures in April that have not been provided?
 2 A. Not of anything related to this issue.
 3 I mean, I certainly have other photographs I took for
 4 personal reasons in April.
 5 Q. At the Sunnyside --
 6 A. No.
 7 Q. -- pit or at --
 8 A. No.
 9 Q. -- the adjacent gravel pit?
 10 A. No.
 11 Q. These five pictures were the only five
 12 pictures that were taken by you that day while
 13 serving your client?
 14 A. Correct.
 15 Q. You've testified that the design rate
 16 for 88 persons at 20 gallons per day would be 1,760
 17 gallons per day. Is that number in any way related
 18 to an actual flow rate?
 19 A. To the best of my knowledge, the flow
 20 rate was not measured prior to the time of failure.
 21 Q. How does the flow rate relate to the
 22 design rate? Is there any connection between those
 23 two?
 24 A. I think I understand what you're asking. 1, 1, 4, 2
 25 The 1,760 is the quantity of wastewater that you

1 They're simply numbers that are required by statute
 2 that one use when designing septic systems.
 3 Q. Is it your opinion that the 20 gallons
 4 per day per person used for design of the system is
 5 the average actual flow rate produced by a person?
 6 A. I guess I don't have any way of
 7 independently supporting that.
 8 Q. Do you know how the state arrived at its
 9 recommended gallonage per day per person?
 10 A. No.
 11 Q. Did you make any inquiry of any state
 12 entity or agency to determine how their numbers were
 13 calculated?
 14 A. No, I did not.
 15 Q. Do you have an opinion as to whether
 16 those numbers have any relation to actual flow rates?
 17 MR. GAFFNEY: To which I'm going to object.
 18 The state's requirements are what they are. I mean,
 19 he's simply commenting on the system versus what the
 20 state requires.
 21 Q. BY MR. FULLER: Do you understand my
 22 question?
 23 A. Can you ask it again, please.
 24 Q. Do you have an opinion as to how the
 25 state's design rates determined at 20 gallons per

DEPOSITION OF ROBERT C. STARR - 10/21/08

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1 No. 4 is simply a different pictorial of the
2 information set forth on No. 3?

3 A. The difference between the upper two
4 panels is the second panel is averaged over a week,
5 and the upper panel is daily values.

6 Q. Is daily values?

7 A. Right. So if you were to take -- if you
8 were -- based on the average, the values in the upper
9 panel, you would get the values in the lower panel.
10 It's the same information, just depicted in a
11 slightly different --

12 Q. Depicted slightly different?

13 A. Right.

14 Q. Okay. Can you help me understand why
15 there is a -- I don't know exactly the date. It's
16 above the six and just before June 1st. Why does it
17 go all the way to the bottom as if there were no use
18 at all?

19 A. Two things. One, it's a weekend. And,
20 No. 2, it was a cool and wet weekend. So the swamp
21 coolers were just not in use.

22 Can we go off the record for a minute.

23 MR. FULLER: If you'd like.

24 (A discussion was held off the record.)

25 Q. BY MR. FULLER: Back on the record. Did

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1 A. Doing a quick, back-of-the-envelope
2 calculation, probably two-thirds.

3 Q. When did the wastewater begin exceeding
4 the permitted and designed capacity of Sunnyside's
5 septic system? Let's take those one at a time. When
6 did the wastewater begin exceeding the permitted
7 capacity of Sunnyside's septic system.

8 A. Well, the system was designed for 300
9 gallons per day, and using the number of 20 gallons
10 per person per day, it would have exceeded the --
11 both the design and the permitted capacity because
12 they're the same when 15 people were producing --
13 providing water that was discharged to the septic
14 system.

15 Q. Based upon the information that you were
16 provided throughout the entire study time from
17 January 1 through June of 2006, there were more than
18 15 people utilizing the system?

19 A. Correct.

20 Q. Is it correct that the average sanitary
21 wastewater, the designed flow of Printcraft Press
22 employees, exceeded both the permitted and designed
23 capacity from January 25 when they first began
24 occupancy?

25 A. Yes. Since Printcraft alone has more

PAGE 150

1 anyone tell you that there was a weekend when there
2 was no wastewater flow from Printcraft? Is that zero
3 number based upon data or --

4 A. It's not based on a measured value for
5 flow rate from Printcraft.

6 Q. I'd like to return to your opinion.

7 A. What page are we on, please?

8 Q. I'm on page 6. Do I understand your
9 opinion No. 6 to be that the cause of the ponding was
10 too much wastewater?

11 A. Page 6 or opinion 6?

12 Q. I'm sorry. Opinion 6 on page 10.

13 A. Ask your question again, please.

14 Q. Am I correct in understanding that your
15 opinion No. 6 is the cause of the ponding of
16 wastewater was the volume of wastewater?

17 A. Yes.

18 Q. Do I correctly understand your paragraph
19 No. 3 under opinion No. 6 that it's your professional
20 opinion that there were some days in May and June
21 when the wastewater discharged into the system
22 exceeded 10,000 gallons per day?

23 A. Yes.

24 Q. What percentage of that was reverse
25 osmosis water?

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1 than 15 employees, the wastewater simply from
2 Printcraft would exceed the designed and permitted
3 capacity of the Sunnyside septic system.

4 Q. Do you agree that the fact that the
5 sanitary waste flow from Sunnyside Industrial Park
6 and Printcraft exceeded both the design and permitted
7 capacity did not cause the failure?

8 A. Let's back up. Are you referring to
9 something I specifically said here? And, if so, if
10 you'll point it out, I can just read it more easily.

11 Q. No. I'm not referring to a specific --

12 A. Okay.

13 Q. I'm trying to draw this together.

14 A. Okay. Just restate the question then,
15 please.

16 Q. Okay. Do you agree that the fact that
17 the sanitary waste flow from both Sunnyside Park and
18 Printcraft exceeded both the design and the permitted
19 capacity, that that did not cause the failure of the
20 system?

21 A. Well, I think that the --

22 MR. GAFFNEY: To which I'm going to object.
23 He's already testified that it was a partial cause.
24 That's implied in his one-third.

25 Q. BY MR. FULLER: Let me state it a little

DEPOSITION OF ROBERT C. STARR - 10/21/08

SHEET 47 PAGE 185

1 MR. GAFFNEY: Well, this is beyond the scope
2 of an expert deposition.

3 MR. FULLER: Are you instructing him not to
4 answer?

5 MR. GAFFNEY: If you want to resubpoena him
6 as a fact witness, you can go ahead and do that.

7 MR. FULLER: You understand that he's
8 already here as a witness today.

9 **Q. BY MR. FULLER: Are you prepared to**
10 **answer questions about this incident?**

11 MR. GAFFNEY: Well, no, this isn't whether
12 he's prepared. This is a due process issue because
13 he's entitled to counsel if you're going to go into
14 some kind of allegations of violation of some civil
15 statute. So it's not whether he's ready. It's
16 whether he's fully represented. And I'm going to
17 suggest to Mr. Starr, even though I don't represent
18 you personally, that before we go there, you are
19 entitled to counsel.

20 **Q. BY MR. FULLER: Do you wish to have your**
21 **own attorney present before you answer any further**
22 **questions?**

23 A. Any questions related to the gravel pit
24 or any allegations that I trespassed, yes.

25 MR. FULLER: If I understand correctly,

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1 place, you're just trying to do it a different way.
2 If you've got questions related to his expert
3 opinions, that's fair game. If you want to go back
4 into this whole issue of the trespass, as an officer
5 of the court, please at least give the witness the
6 courtesy of advising him that he does have the right
7 to counsel present. That's simple -- that's simply
8 your requirement and my requirement as officers of
9 the court.

10 Furthermore, I would suggest that your
11 cause of action related to trespass relates to
12 conduct that my client engaged in, and Mr. Starr is
13 not our client nor a named party.

14 **Q. BY MR. FULLER: Were you in the**
15 **employ -- by whom were you employed on the day that**
16 **the first five photographs on Exhibit *-010 were**
17 **taken?**

18 A. By North Wind.

19 MR. FULLER: Okay. Let's stop for just a
20 minute and let me consult with my client. And then I
21 believe, given those positions, I think we may be
22 done.

23 (A recess was taken from 4:36 p.m. to
24 4:40 p.m.)

25 MR. FULLER: I have no further questions.

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1 you're not instructing him not to answer?

2 MR. GAFFNEY: No, but I am instructing him
3 of his rights to have counsel present.

4 **Q. BY MR. FULLER: Okay. And you are**
5 **choosing at this point not to proceed further unless**
6 **you're given the opportunity to have your own**
7 **attorney?**

8 A. With any questions -- any further
9 questions about the gravel pit or any allegations
10 that I trespassed. So if you have other questions or
11 questions on other topics, we can continue.

12 **Q. Were you present when the photographs**
13 **taken on Exhibit -- the photographs depicted on**
14 **Exhibit *-010 were taken?**

15 A. Was I present?

16 **Q. Yes. When the first five pictures on**
17 **Exhibit *-010 were taken.**

18 A. Yes.

19 **Q. Who took these photographs?**

20 A. I took them.

21 **Q. Can you identify for me on Exhibit *-009**
22 **where you were standing when those photographs were**
23 **taken?**

24 A. I think we were talking --

25 MR. GAFFNEY: You're going to the same

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1 Do you have cross examination,
2 Mr. Gaffney?

3 MR. GAFFNEY: Just a couple of questions.

4
5 EXAMINATION

6 BY MR. GAFFNEY:

7 **Q. The septic system at the Sunnyside**
8 **Industrial Park that failed back in, I believe it**
9 **was, June of '06 in terms of capacity, where would**
10 **you typically expect to find a system of that**
11 **capacity?**

12 A. Okay. The permitted capacity is --

13 **Q. I'm talking about the permitted**
14 **capacity.**

15 A. Okay. The permitted capacity, right.
16 The permitted capacity is like 300 gallons a day, and
17 that's what you'd put in for a four-bedroom house.
18 So a fairly small system.

19 **Q. If at the time this septic system**
20 **failed, at least by my calculations, there were 133**
21 **-- on average, 133 people using the system, which**
22 **would include 45 Printcraft employees and 88**
23 **non-Printcraft users, would your understanding of the**
24 **Idaho capacity requirements be that 20 gallons per**
25 **day times that 133?**

DEPOSITION OF ROBERT C. STARR - 10/21/08

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1 A. If we're assuming that there -- that all
2 the users are basically office workers.
3 Q. Right.
4 A. Yes.
5 Q. Okay. That would have been the capacity
6 required by state law basically?
7 MR. FULLER: Object. It calls for a legal
8 conclusion.
9 Q. BY MR. GAFFNEY: Well, if that's what
10 the state law required, 20 gallons per day per -- I'm
11 going to use the term "user." I don't know what the
12 correct term is -- it's simply a matter of
13 multiplying that out, right?
14 A. Right.
15 Q. Okay.
16 A. 20 gallons a day times --
17 Q. 133.
18 A. So we round to 130, so that would be
19 2,600 gallons per day.
20 Q. Now, even four times the capacity of
21 that, we're up around a system capable of handling
22 over 10,000 gallons a day, right?
23 A. Yes.
24 Q. Okay. And at 13 times we're up around a
25 system capable of handling in excess of 34,000

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VERIFICATION

STATE OF)
COUNTY OF) ss.

I, ROBERT C. STARR, say that I am the witness referred to in the foregoing deposition, taken October 21, 2008, consisting of pages numbered 1 to 192; that I have read the said deposition and know the contents thereof; that the same are true to my knowledge, or with corrections, if any, as noted.

Page Line Should Read Reason

ROBERT C. STARR

Subscribed and sworn to before me this
day of 2008, at , Idaho.

(Seal) Notary Public for Idaho
My Commission Expires

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1 gallons a day, right? Well, let's just say ten
2 times.
3 A. Okay. Yes.
4 MR. GAFFNEY: Okay. That's all I've got.
5 MR. FULLER: I have no further questions.
6 (The deposition concluded at 4:43 p.m.)
7 -ooOoo-

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REPORTER'S CERTIFICATE

STATE OF IDAHO)
COUNTY OF BONNEVILLE) ss.

I, Sandra D. Terrill, CSR, RPR, and Notary Public in and for the State of Idaho, do hereby certify:

That prior to being examined ROBERT C. STARR, the witness named in the foregoing deposition, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true and verbatim record of said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this 29th day of October 2008.

Sandra D. Terrill
Idaho CSR No. 702,
Notary Public in and for
the State of Idaho.

My Commission Expires: 11-10-10

1445

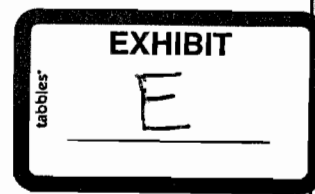
Transcript of the Testimony of:
Travis Waters

Date: April 25, 2007
Volume: I

Case: PRINTCRAFT PRESS, INC. v. SUNNYSIDE
UTILITIES, INC.

Printed On: 5/8/2007

T&T Reporting
Phone: 208/529-5491
Fax: 208/529-5496
Email: tntreport@ida.net
Internet: www.tandtreport.com



1 A. None.
 2 Q. Has he ever held a position?
 3 A. No.
 4 Q. Why was he present at the meeting that
 5 was in your office last September?
 6 A. He's a partner in CTR Development, which
 7 built the building.
 8 Q. He's not involved in the daily
 9 operations of Printcraft Press?
 10 A. Not at all.
 11 Q. When was Printcraft Press formed or
 12 organized, what year, if you recall?
 13 A. Late '80s it was incorporated.
 14 Q. Had the business existed under a
 15 different name before it was incorporated?
 16 A. The business has existed since 1927, I
 17 believe, under Printcraft Press. Then, of course,
 18 when it incorporates, it adds the I-n-c.
 19 Q. What point did Travis Waters become
 20 involved with the business?
 21 A. I was employed by Printcraft in '90 to
 22 '91, and then unemployed and came back and bought the
 23 business in 1999.
 24 Q. Are you the sole stockholder?
 25 A. My wife and I, yes.

1 Q. Besides the two of you, are there any
 2 other stockholders currently?
 3 A. No.
 4 Q. Can you describe, generally, for me, the
 5 business operations? What do you do?
 6 A. We produce printed products, store and
 7 fulfill those products to our customers.
 8 Q. Do you have any business locations other
 9 than your current location on Professional Way?
 10 A. No.
 11 Q. Where was the business located before
 12 you moved to your current location on Professional
 13 Way?
 14 A. We had two locations. One on 5020 South
 15 Yellowstone, and one -- I don't remember the address.
 16 It's directly behind the existing building right now
 17 on the corner of South Yellowstone and that street
 18 that goes back in to BMC West.
 19 Q. Is Printcraft Press authorized to
 20 transact business in any state other than Idaho?
 21 A. Yes.
 22 Q. Which states are you also authorized, 1 1 4
 23 besides Idaho, to conduct business in?
 24 A. What do you mean by authorized?
 25 Q. Do you have business operations in other

1 states?
 2 A. Do we have customers in other states?
 3 Q. No. Do you have a printing facility in
 4 another state?
 5 A. No.
 6 Q. You currently only have one location in
 7 all the world, and that's on Professional Way?
 8 A. Correct.
 9 Q. Do you have sales representatives who
 10 reside and work in other states?
 11 A. No.
 12 Q. Explain for me, generally, your customer
 13 base.
 14 A. Network marketing companies,
 15 pharmaceutical companies, manufacturers, businesses.
 16 Q. Are they all within the United States?
 17 A. Yes.
 18 Q. Do you market overseas or out of the US?
 19 A. No.
 20 Q. Does Printcraft Press have any
 21 subsidiary companies?
 22 A. No.
 23 Q. To help you understand, some companies
 24 set up a separate marketing entity or a separate
 25 employment entity to hire all of its employees, you

1 don't have any companies like that?
 2 A. No.
 3 Q. Does Printcraft Press have a parent
 4 company?
 5 A. No.
 6 Q. How many employees does Printcraft Press
 7 have today?
 8 A. 40.
 9 Q. Can you describe for me how many of them
 10 are involved in management?
 11 A. Describe management.
 12 Q. Tell me how your employees are divided
 13 by type.
 14 A. Administrative and production.
 15 Q. How many people are involved in
 16 administration?
 17 A. Roughly, nine.
 18 Q. Can you identify those individuals for
 19 me, please?
 20 A. Travis Waters, Diane McFarlane, Jana
 21 Dean, Jonathan, Jamie, Lee, Terry Luzier, Cindy
 22 Donovan, Denise Cherry, Cheryl. I think that's it.
 23 Q. Let's examine those just a little bit.
 24 Can you briefly explain for me what Diane does?
 25 A. Bookkeeper.

1 Q. Jana?
 2 A. Quality.
 3 Q. Can you explain that for me?
 4 A. She oversees our ISO and lien
 5 manufacturing standards.
 6 Q. Is she your quality compliance?
 7 A. Yes.
 8 Q. How long has Jana worked for you?
 9 A. Off and on for five years.
 10 Q. What does Jonathan do?
 11 A. He's an estimator.
 12 Q. Jamie?
 13 A. Customer service.
 14 Q. Lee?
 15 A. Customer service.
 16 Q. Terry Luzier?
 17 A. We transitioned him into sales in
 18 January. Before that, he was production manager.
 19 Before that, he was sales.
 20 Q. Cindy?
 21 A. She's our customer service manager and
 22 also a customer service rep.
 23 Q. Is she the superior to Jamie and Lee?
 24 A. Uh-huh.
 25 Q. Denise?

1 A. Customer service.
 2 Q. Cheryl?
 3 A. Customer service.
 4 Q. Any other administrators other than
 5 those that you've identified?
 6 A. No.
 7 Q. What are your responsibilities, Travis?
 8 A. I oversee the department heads, every
 9 department head reports to me. The bookkeeper
 10 reports to me. My primary duties are sales,
 11 marketing, general management.
 12 Q. Of the individuals you've listed here,
 13 who would you identify as a department head?
 14 A. Cindy.
 15 Q. Anyone else?
 16 A. Diane, and Terry.
 17 Q. Are there other department heads that
 18 you have not identified over other departments?
 19 A. Yes.
 20 Q. Who are they?
 21 A. Curt Gaddie, Todd, Bryce Williams, and
 22 Jana Dean would really be a department head, although
 23 it's only a one person department.
 24 Q. What are Curt's duties? What department
 25 does he head?

1 A. The litho press room.
 2 Q. What is Todd's last name?
 3 A. Landon.
 4 Q. What department is Todd head of?
 5 A. The flexo press room.
 6 Q. Bryce Williams?
 7 A. The bindery.
 8 Q. Any other department heads that you've
 9 not identified that you can think of?
 10 A. No.
 11 Q. All right. With a total of 40
 12 employees, and you've identified here 13, including
 13 yourself, the other 27 would be given what
 14 responsibilities?
 15 A. Production.
 16 Q. Can you describe for me, generally, what
 17 their responsibilities would be?
 18 A. Coming to work at an assigned time,
 19 manning a piece of equipment or a process.
 20 Q. Do any of them have administrative
 21 responsibilities that we haven't discussed already by
 22 name?
 23 A. No.
 24 Q. Can you identify those individuals for
 25 me who are responsible in your production department?

1 A. Walt.
 2 Q. Does Walt have a last name?
 3 A. Let me dig into some --
 4 Q. Do you have an employee list? That
 5 might be easier.
 6 A. Walt isn't on it. He's a new employee.
 7 My list isn't current.
 8 Q. Would you mind if we make a copy of that
 9 list and attach it? It might save us time going
 10 through your memory.
 11 A. I think you've already got it.
 12 MR. FULLER: I don't believe we've requested
 13 this.
 14 MR. ERICKSON: I don't think so either.
 15 This is a list that Travis prepared for a Christmas
 16 party around December of '06. I'm not sure what the
 17 checks and numbers and lines and question marks all
 18 mean.
 19 MR. FULLER: Let's stop just a minute, and
 20 I'll make a copy, and you can explain that for us.
 21 (A discussion was held off the record.)
 22 (Exhibit *-002 marked.)
 23 Q. BY MR. FULLER: I'm going to hand you
 24 what's been marked as Exhibit *-002. This is a copy.
 25 We'll now use this one as the original. You prepared

7:44 AM
12/26/06

Christmas Party
PRINTCRAFT PRESS, INC.
Employee Contact List

Employee

✓ ANDERSON, LEIGH	2
BAHR, CINDY L ?	
BAKER, JOHN K.	
✓ BAME, TRICIA S.	
✓ BOYACK, RICHARD	
✓ CARSON, TERRI L.	
✓ CHERRY, DENISE	
✓ CORTEZ, MAYRA E.	2
✓ CROFT, ANDREW M.	
✓ CRYSTAL, REBECCA L	
✓ DALLIMORE, SCOTT D	
✓ DAVIS, SHANES L.	
✓ DONOVAN, CINDY	2
✓ DYER, HOPE A.	1
✓ FLITTON, DEANNA S.	1
FURNISS, TODD F.	
✓ GADDIE, CURTIS E.	
GRIMSHAW, KRIS	
✓ HERNANDEZ, ANA	
HOLT, MICHAEL L.	
✓ HOPE, JONATHAN W	
✓ HOPSON, MICHAEL P.	2
✓ LANDON, TODD	
✓ LEWIS, WALTER R.	
✓ LORDS, MITCHELL K.	2
✓ LUZIER, LINDSAY R.	
✓ LUZIER, TERRANCE	2
✓ MARTINEZ, MARIA F.	2
✓ McFARLANE, DIANE M	1
✓ MUUS, JAMIE L	2
✓ PENCE, AMY N	
PERKINS, DONALD R. ?	
✓ PETERSON, TRAVIS	
✓ RAMIREZ, FRANCES P.	
✓ REAGLE, SHERYLL A.	2
✓ SOTO, MARIA C.	2
✓ STILWELL, JACKIE L	
✓ TOBIN, PATTI J	

1449

7:44 AM
12/26/06

PRINTCRAFT PRESS, INC.
Employee Contact List

Employee

✓ WATERS, MELISSA

✓ WATERS, TRAVIS

✓ WILLIAMS, BRYCE G

✓ WIXOM, SANDON

✓ WOOLSTENHULME, Elmo

2

✓ WOOLSTENHULME, SH. Elby

✓ WRIGHT, SHELLIE

2

Todd Sykes

Dow (?) production

Bryan D. Smith, Esq. – ISB No. 4411
B. J. Driscoll, Esq. – ISB No. 7010
SMITH, DRISCOLL & ASSOCIATES, PLLC
P. O. Box 50731
414 Shoup Avenue
Idaho Falls, Idaho 83405
Telephone: (208) 524-0731
Telefax: (208) 529-4166

BONNEVILLE COUNTY
IDAHO

2009 JAN -2 PM 4: 23

Attorneys for Defendants, Doyle Beck,
and Kirk Woolf

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS, INC., an
Idaho corporation,

Plaintiff,

v.

SUNNYSIDE PARK UTILITIES, INC.,
An Idaho corporation, SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an Idaho
corporation, SUNNYSIDE INDUSTRIAL
AND PROFESSIONAL PARK, LLC, an
Idaho limited liability corporation, DOYLE
BECK, an individual, and KIRK WOOLF,
an individual,

Defendants.

SUNNYSIDE PARK UTILITIES, INC., an
Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
Corporation,

Counterclaimants,

v.

Case No. CV-06-7097

AFFIDAVIT OF BRYAN D. SMITH

PRINCRAFT PRESS, INC., an)
Idaho corporation, and TRAVIS WATERS,)
an individual,)
)
Counter-defendants.)
_____)

STATE OF IDAHO)
) ss.
County of Bonneville)

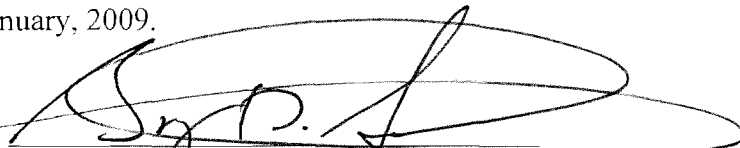
I, Bryan D. Smith, state and declare the following under oath:

1. I am the attorney of record for defendants Doyle Beck and Kirk Woolf, and I make this affidavit based on my personal knowledge.

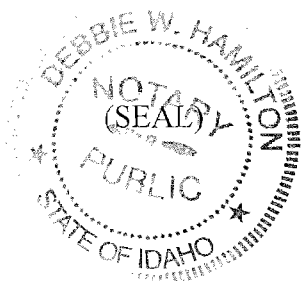
2. Attached hereto and marked as Exhibit "A" is a true and correct copy of the cover page and pages 296-301, 306-314, 219, and 358-360 of the transcript of the deposition testimony of Travis Waters for Printcraft Press, Inc. taken pursuant to I.R.C.P. 30(b)(6) on December 22, 2008 in the above-referenced matter.

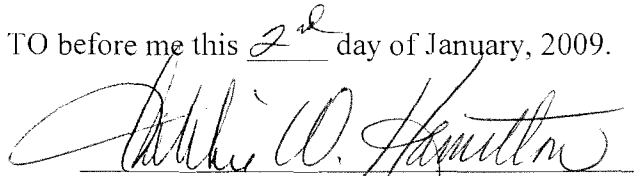
Further sayeth your affiant not.

DATED this 2nd day of January, 2009.


Bryan D. Smith

SUBSCRIBED AND SWORN TO before me this 2nd day of January, 2009.




Notary Public for the State of Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 04/11/11

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of January, 2009 I caused a true and correct copy of the foregoing **AFFIDAVIT OF BRYAN D. SMITH** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

- ☒ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Overnight Delivery
- ☐ Hand Delivery
- ☐ Courthouse Mail Box

Jeffrey D. Brunson, Esq.
Lance J. Schuster, Esq.
John M. Avondet, Esq.
Michael D. Gaffney, Esq.
BEARD ST. CLAIR
2105 Coronado Street
Idaho Falls, ID 83404

- ☐ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Overnight Delivery
- ☒ Hand Delivery
- ☐ Courthouse Mail Box

Mark R. Fuller, Esq.
Daniel Beck, Esq.
FULLER & CARR
410 Memorial Drive, Suite 201
P. O. Box 50935
Idaho Falls, ID 83405-0935


Bryan D. Smith

EXHIBIT “A”

Transcript of the Testimony of:
Rule 30(b)(6) - Travis Waters

Date: December 22, 2008

Volume: I

Case: PRINTCRAFT PRESS, INC. v. SUNNYSIDE
UTILITIES, et al

Printed On: 1/2/2009

T&T Reporting
Phone:208/529-5491
Fax:208/529-5496
Email:tntreport@ida.net
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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINTCRAFT PRESS, INC., an Idaho
corporation,

Plaintiff,

vs.

SUNNYSIDE PARK UTILITIES, INC.,
an Idaho corporation, SUNNYSIDE
PARK OWNERS ASSOCIATION, INC., an
Idaho corporation, SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL PARK,
LLC, an Idaho limited liability
corporation, DOYLE BECK, an
individual, and KIRK WOOLF, an
individual,

Defendants.

SUNNYSIDE PARK UTILITIES, INC.,
an Idaho corporation,

Counterclaimant,

vs.

PRINTCRAFT PRESS, INC., an Idaho
corporation, and TRAVIS WATERS,
an individual,

Counter-defendants.

) Case No.

) CV-06-7097

) RULE 30(B)(6)

) DEPOSITION OF

) PRINTCRAFT PRESS,
) INC.

) TESTIMONY OF

) TRAVIS WATERS

) December 22, 2008

) Idaho Falls, Idaho

) VOLUME II

) Pages 230 - 494

Daniel E. Williams,

RPR, CSR

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1 back?
 2 (The last question was read by the
 3 reporter.)
 4 MR. GAFFNEY: Same objection.
 5 Go ahead and answer it if you
 6 understand it.
 7 THE WITNESS: I was under the
 8 understanding there was sewer service, and I was
 9 not told that there was any limitations.
 10 Q. (BY MR. SMITH) Do you understand that
 11 that's again nonresponsive to my question?
 12 MR. GAFFNEY: And, actually, it's a
 13 syllogism at least to the answer that --
 14 MR. SMITH: Do you want to read my
 15 question back again?
 16 Q. (BY MR. SMITH) And I'm not going to
 17 read it back again. So this is the last time I'm
 18 going to ask this question because this is
 19 perfectly appropriate. If you don't understand
 20 the question, you can tell me and we can talk
 21 about it. But I need to have you answer this
 22 question and not some other question; okay?
 23 MR. SMITH: Could you read it back,
 24 please?
 25 (The requested question was read by the

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1 reporter as follows:
 2 "QUESTION: Let me ask you this, sir:
 3 By failing to disclose the 300-gallon-per-day
 4 limitation, did Mr. Beck and Mr. Woolf lead you
 5 to believe anything about the system's capacity
 6 in terms of gallons per day that you believe is
 7 false?")
 8 MR. GAFFNEY: Same objection.
 9 THE WITNESS: Yes.
 10 Q. (BY MR. SMITH) All right. And what is
 11 it that they led you to believe that was false?
 12 A. That there was no limited capacity.
 13 Q. All right. In this case, sir, what
 14 were the limitations on gallons per day between
 15 the time Printcraft Press hooked up to the system
 16 and the day that Printcraft Press was turned off
 17 by Mr. Beck and Mr. Woolf?
 18 THE WITNESS: Can you repeat that?
 19 Q. (BY MR. SMITH) Let me just say it
 20 differently.
 21 When was it that you moved in,
 22 Printcraft Press?
 23 A. January of '06.
 24 Q. January of 2006. And when was it that
 25 Mr. Beck and Mr. Woolf cut you off?

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1 A. December 15th.
 2 Q. Of 2006?
 3 A. Yes.
 4 Q. All right. Can you identify any day
 5 during that period when Printcraft Press was
 6 limited in the amount of gallons per day it was
 7 able to discharge in the system?
 8 A. In June, when Doyle Beck and I got
 9 together and he told me that his system failed,
 10 he told me that I had to limit my flows, that I
 11 was pushing too much water down his system.
 12 Q. Okay. Would you agree, then, that
 13 between January of 2006 and June of 2006,
 14 Printcraft Press was never limited in the amount
 15 of gallons per day it could discharge down the
 16 system?
 17 MR. GAFFNEY: To which I'm going to
 18 object. Limited by what, who?
 19 MR. SMITH: It doesn't matter.
 20 MR. GAFFNEY: Well, it does.
 21 Q. (BY MR. SMITH) Can you answer my
 22 question, sir?
 23 A. I was not aware of any limitations.
 24 Q. Okay. Was there any day during January
 25 of 2006, the date you moved in, and June, when

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1 the sewer system did not accept all the gallons
 2 per day that Printcraft Press discharged into the
 3 system?
 4 A. I don't know.
 5 Q. You do not know?
 6 A. I don't know.
 7 Q. Who would know that?
 8 A. Probably Sunnyside Utilities.
 9 Q. Would you then agree, then, based on
 10 your knowledge, you do not have any evidence in
 11 this case to establish that between January of
 12 2006, when you moved in with Printcraft, and
 13 June, when you had this discussion with Mr. Beck,
 14 there was never a day when the sewer system did
 15 not accept all of the gallons being discharged
 16 into the system from Printcraft Press?
 17 A. That's not correct.
 18 Q. Okay. What days were they, sir, that
 19 the system would not accept all of the gallons
 20 being discharged?
 21 A. According to Larry Schuldts, there was a
 22 time in April when the system wouldn't take it.
 23 Q. Okay. What day was that in April?
 24 A. I don't recall.
 25 Q. How many gallons did it not accept?

18 (Pages 295 to 298)

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<p style="text-align: right;">Page 299</p> <p>1 A. I don't know.</p> <p>2 Q. Okay. So besides the day in April from</p> <p>3 Larry Schuldt that you don't know what day it was</p> <p>4 or how many gallons it wouldn't accept, was there</p> <p>5 any other time period between January of 2006 and</p> <p>6 June when the system would not accept all of the</p> <p>7 gallons per day that Printcraft Press was</p> <p>8 discharging?</p> <p>9 A. I think it's safe to say it was from</p> <p>10 April until I saw it in June.</p> <p>11 Q. Okay. Then let's just do this, sir:</p> <p>12 From January of 2006 until April of 2006, was</p> <p>13 there ever a day when the system wouldn't accept</p> <p>14 all of the gallons per day that Printcraft was</p> <p>15 discharging?</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. Okay. So you would agree with me,</p> <p>18 then, that from January of 2006 until April of</p> <p>19 2006, the sewer system accepted all gallons per</p> <p>20 day that Printcraft discharged?</p> <p>21 A. No, I wouldn't agree with that. I</p> <p>22 don't know if it did or if it didn't.</p> <p>23 Q. Okay. You don't agree with that, but</p> <p>24 do you have any evidence to show that it's</p> <p>25 different than that?</p>	<p style="text-align: right;">Page 301</p> <p>1 Q. Okay. So doesn't that, then, tend to</p> <p>2 indicate that, in fact, Sunnyside had accepted</p> <p>3 Printcraft's sewage and it had been pushed</p> <p>4 through the system?</p> <p>5 MR. GAFFNEY: I'll object. The</p> <p>6 question is argumentative.</p> <p>7 THE WITNESS: No.</p> <p>8 Q. (BY MR. SMITH) Okay. What are you</p> <p>9 saying, then? How many gallons in April, during</p> <p>10 this incident, if you know, did Sunnyside have</p> <p>11 to -- excuse me, did Printcraft have to discharge</p> <p>12 that Sunnyside would not accept?</p> <p>13 A. I don't know.</p> <p>14 Q. From April until June, when you had</p> <p>15 this meeting with Mr. Beck, do you have any</p> <p>16 way -- can you identify any gallons per day that</p> <p>17 Printcraft attempted to discharge that Sunnyside</p> <p>18 did not accept?</p> <p>19 A. I don't know how to monitor that. No.</p> <p>20 Q. Do you have any evidence for that?</p> <p>21 A. No.</p> <p>22 Q. And then in June of 2006, you're saying</p> <p>23 you had a meeting with Mr. Beck?</p> <p>24 A. (Witness nodded head.)</p> <p>25 Q. Is that a yes?</p>
<p style="text-align: right;">Page 300</p> <p>1 A. No.</p> <p>2 Q. Do you have any evidence to show that I</p> <p>3 would be wrong about that statement?</p> <p>4 A. No.</p> <p>5 Q. All right. Then from April to June --</p> <p>6 and what was the incident in April that you say</p> <p>7 led to the system not accepting all of the</p> <p>8 gallons per day discharged by Sunnyside --</p> <p>9 discharged by Printcraft?</p> <p>10 A. I don't know what led to that.</p> <p>11 Q. No. I'm asking you: What you are</p> <p>12 about? Larry Schuldt mentioned something. I</p> <p>13 still don't know what you're talking about.</p> <p>14 A. He referred to a meeting between him</p> <p>15 and Doyle Beck down at the pit, where the septic</p> <p>16 tank is at, where they discussed pooling of</p> <p>17 sewage aboveground.</p> <p>18 Q. Okay. Do you know whose sewage that</p> <p>19 was?</p> <p>20 A. I don't.</p> <p>21 Q. Do you know if that was even Printcraft</p> <p>22 Press's sewage?</p> <p>23 A. I assume it was.</p> <p>24 Q. And how do you know that?</p> <p>25 A. Because we used sewage that day.</p>	<p style="text-align: right;">Page 302</p> <p>1 A. Yes.</p> <p>2 Q. And what was that meeting about?</p> <p>3 A. Pooling of sewage down in the septic</p> <p>4 tank -- septic pit -- the gravel pit where the</p> <p>5 septic tank is at.</p> <p>6 Q. Did you reach an agreement with</p> <p>7 Mr. Beck about modifying your sewage?</p> <p>8 A. Yes.</p> <p>9 Q. And what was the agreement?</p> <p>10 A. That I would try to limit my flows and</p> <p>11 that I would buy a water meter and he would</p> <p>12 install it.</p> <p>13 Q. And you agreed to that?</p> <p>14 A. Yes.</p> <p>15 Q. Would you agree that from the date you</p> <p>16 moved in, in January of 2006, until April of</p> <p>17 2006, you have absolutely no evidence to</p> <p>18 establish that Sunnyside did not accept all</p> <p>19 gallons per day from Printcraft?</p> <p>20 MR. GAFFNEY: Object. Asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: I'll stick with my</p> <p>23 previous answer.</p> <p>24 MR. SMITH: Do you want to read that</p> <p>25 back? Because I think I asked the question just</p>

<p style="text-align: right;">Page 303</p> <p>1 a little bit differently this time. 2 THE REPORTER: Just this recent -- 3 MR. SMITH: Uh-huh. 4 THE REPORTER: Okay. 5 MR. GAFFNEY: Yeah, I think you put 6 "absolutely" in there. 7 MR. SMITH: It doesn't matter. It's 8 not the same question, Counsel. 9 (The last question was read by the 10 reporter.) 11 MR. GAFFNEY: Same objection. 12 THE WITNESS: The same answer as 13 before. 14 Q. (BY MR. SMITH) And what was your 15 answer, sir? 16 THE WITNESS: Can you read that back 17 for me? 18 THE REPORTER: The previous question to 19 that was: 20 "QUESTION: And you agreed to that? 21 "ANSWER: Yes." 22 Do you want the question before that? 23 MR. SMITH: I don't know. He's the one 24 raising the objection. You'll have to ask 25 Mr. Gaffney.</p>	<p style="text-align: right;">Page 305</p> <p>1 discharge" -- not that one? 2 MR. GAFFNEY: No. It had to do with 3 having any evidence for that time period that 4 Sunnyside wouldn't accept the waste -- or sewage, 5 I mean. 6 THE REPORTER: Okay. So if I look for 7 "evidence," right, it should be there? 8 I think this is -- it's in several 9 questions. 10 "QUESTION: From April until June, when 11 you had this meeting with Mr. Beck" -- 12 MR. SMITH: No, that's not it. 13 THE REPORTER: And then it says -- then 14 he answers, and it comes back: 15 "QUESTION: Do you have any evidence 16 for that?" 17 MR. SMITH: But that was from April 18 until June. Now we're talking about from January 19 to April. 20 THE REPORTER: So if I search for 21 "April," right, that would be the logistics here? 22 I don't have a question that is -- that 23 has that time frame. 24 MR. SMITH: Then go back and read my 25 question. I also have something to put on the</p>
<p style="text-align: right;">Page 304</p> <p>1 MR. GAFFNEY: I think you asked him if 2 he had any evidence. and then I think you asked 3 him if he had absolutely no evidence. I think 4 it's pretty much the same thing. As my brother 5 used to say, "It's the same thing but a totally 6 different concept." 7 THE REPORTER: Keep going back or -- 8 MR. SMITH: I don't know. I've asked 9 him to answer the question, and he wants you to 10 reference a prior answer he's given in response 11 to that. It might be as simple as a "yes"; I 12 don't know. 13 THE REPORTER: So we're going -- 14 because there's -- we did have different 15 questions before that. 16 MR. SMITH: I understand that. You 17 need to ask Mr. Waters to identify what response 18 he wants to incorporate. 19 THE REPORTER: And do you remember the 20 question? 21 THE WITNESS: No, I don't. 22 THE REPORTER: "QUESTION: From April 23 until June, when you had this meeting with 24 Mr. Beck, do you have any way -- can you identify 25 any gallons per day that Printcraft attempted to</p>	<p style="text-align: right;">Page 306</p> <p>1 record. 2 (The requested question was read by 3 the reporter as follows: 4 "QUESTION: Would you agree that from 5 the date you moved in, in January of 2006, until 6 April of 2006, you have absolutely no evidence to 7 establish that Sunnyside did not accept all 8 gallons per day from Printcraft?") 9 THE WITNESS: I have no evidence. 10 Q. (BY MR. SMITH) Then isn't it the case, 11 sir, that at least for the time period from 12 January of 2006 to April of 2006, Mr. Beck's 13 leading you to believe and Mr. Woolf's leading 14 you to believe that Sunnyside would accept all 15 gallons per day was absolutely true? 16 MR. GAFFNEY: I'll object. That's 17 argumentative. 18 Q. (BY MR. SMITH) Would you like him to 19 read it back? 20 A. Sure. 21 (The last question was read by the 22 reporter.) 23 MR. GAFFNEY: Same objection. It's 24 argumentative. 25 THE WITNESS: Yes.</p>

<p style="text-align: right;">Page 307</p> <p>1 Q. (BY MR. SMITH) After you reached this 2 agreement with Mr. Beck in June, did Sunnyside 3 continue to accept -- or did Sunnyside accept, 4 excuse me, all of the gallons per day through the 5 time period that Mr. Beck cut off the service 6 from Printcraft Press? 7 A. Yes. 8 Q. All right. Let's move to another 9 topic, sir. Another item identified in your 10 complaint that we've discussed many times, but 11 I'll just refresh your memory as to what we're 12 going to talk about, is the permit identifies a 13 number -- it says "one to two buildings." 14 And I believe it's Printcraft Press's 15 position, but you tell me if I've got it wrong, 16 that Mr. Beck -- the "one to two buildings" 17 reference is a reference that only one to two 18 buildings could be hooked up to this system. Is 19 that what your claim is? 20 A. Explain "system." 21 Q. The sewer system. 22 A. The collection system or the septic 23 system? 24 Q. Tell me how you distinguish between the 25 two.</p>	<p style="text-align: right;">Page 309</p> <p>1 buildings can be hooked up. I don't know. 2 Q. (BY MR. SMITH) Well, on this issue, 3 you say that they should have disclosed this one 4 to two building limitation in the permit. Are 5 you saying that their failure to disclose that 6 led you to believe something that wasn't true? 7 A. It led me to believe that it was okay 8 for me to hook up. 9 Q. All right. Did Printcraft Press hook 10 up to the sewer system owned by Sunnyside? 11 A. Printcraft Press's builder, CTR 12 Development, hooked up to the collection system 13 that had been plumbed in or hooked up to the 14 septic system. 15 Q. So was Mr. Beck and Mr. Woolf's leading 16 you to believe that Printcraft could hook up to 17 the sewer system true or false? 18 A. True. 19 MR. GAFFNEY: I need another break, 20 please. I apologize for this. 21 MR. SMITH: Okay. 22 (A recess was taken from 11:49 a.m. to 23 11:55 a.m.) 24 Q. (BY MR. SMITH) Okay. Mr. Waters, 25 let's go back to April of 2006. I was asking you</p>
<p style="text-align: right;">Page 308</p> <p>1 A. The septic system is the septic tank 2 and drain field. The collection system is the 3 pipes and manholes inside the subdivision. 4 Q. Okay. You tell me, what is -- what 5 does Printcraft Press claim, in this case, that 6 the significance of the reference is when it 7 identifies one to two buildings in the permit? 8 A. That's on the septic system permit, so 9 I assume it's talking about the septic tank and 10 drain field. 11 Q. All right. And what is Printcraft 12 Press's position with respect to what that means, 13 the one to two building reference in the permit? 14 A. That during the application process, 15 the system was designed for one to two buildings. 16 Q. And are you claiming that Mr. Beck and 17 Mr. Woolf's failure to disclose the one to two 18 building limitation with respect to the permit 19 led Printcraft Press to believe that there would 20 be no limitations on the number of buildings that 21 could be hooked up? 22 THE WITNESS: Would you read that over? 23 (The last question was read by the 24 reporter.) 25 THE WITNESS: I don't know how many</p>	<p style="text-align: right;">Page 310</p> <p>1 questions about what the Sunnyside system had 2 accepted in terms of gallons per day, and you 3 identified April as a day when you claim that 4 Sunnyside didn't take -- or a month, at least, 5 when Sunnyside didn't take all of the gallons per 6 day. 7 What did you -- when did you first 8 learn about that, as you've described it today? 9 A. Last week. 10 Q. In Mr. Schult's deposition? 11 A. Yeah. 12 Q. Now, did you ever have any sewage 13 backing up, in April of 2006, into your facility? 14 A. No. 15 Q. Well, then where did your sewage go to? 16 A. The gravel pit. 17 Q. So are you saying that -- okay. So 18 you're saying it went into the septic tank and 19 through the system and into the gravel pit? 20 A. Yeah, it went into the gravel pit. 21 Q. And so what makes you say, as you 22 reflect on Mr. Shut's testimony, that Sunnyside 23 didn't accept the gallons that you produced in 24 April? 25 A. Because the sewage was down in the</p>

<p style="text-align: right;">Page 311</p> <p>1 gravel pit, not in the septic tank or the drain 2 field. 3 Q. Anything else? 4 A. No. 5 Q. Now, do you agree that the sewage would 6 have to go through the system, including the 7 septic tank, in order to find its way to the 8 drain field? 9 A. Kind of. It would go through the 10 pipes, but it wouldn't get processed. 11 Q. Okay. Would you agree that it would 12 have to pass through the pipes owned by Sunnyside 13 in order to make it to the drain field? 14 A. Yes. 15 Q. Would you agree, then, that all of the 16 gallons per day in April actually exited the 17 Printcraft Press facility and it went into the 18 piping system belonging to Sunnyside Utilities? 19 A. Yes. 20 Q. Another issue that we've talked about 21 is, on Exhibit 23, you feel that Mr. Beck and 22 Mr. Woolf should have disclosed paragraph 6, 23 which says -- it's this letter from District 24 Seven Health Department. It says that "No new 25 connections will be allowed on the current sewer</p>	<p style="text-align: right;">Page 313</p> <p>1 reporter read back my prior question? 2 Q. (BY MR. SMITH) And that really -- this 3 question has to do with small picture, not big 4 picture. So I need to have you answer the 5 picture about the small picture. 6 (The requested question was read by 7 the reporter as follows: 8 "QUESTION: Are you claiming that 9 Mr. Beck and Mr. Woolf's failure to disclose this 10 paragraph 6 led you to believe that there would 11 be no new connections allowed on the current 12 sewer collection system?") 13 MR. GAFFNEY: I'm going to the object. 14 The question doesn't make sense the way it's 15 stated. 16 THE WITNESS: They didn't tell me about 17 paragraph 6. 18 MR. GAFFNEY: Did you get my objection? 19 THE REPORTER: Yes. 20 MR. GAFFNEY: All right. 21 Q. (BY MR. SMITH) And did that lead you 22 to believe that you would be allowed to connect 23 to the current sewer collection system? 24 A. I didn't know paragraph 6 existed. It 25 didn't lead me to believe anything. I didn't</p>
<p style="text-align: right;">Page 312</p> <p>1 system until a Large Soil Absorption System, that 2 replaces the current septic system, is approved 3 and operating." 4 Now, would you agree that Printcraft 5 Press was, in fact, allowed to connect to the 6 current sewer collection system? 7 A. Yes. 8 Q. Are you claiming that Mr. Beck and 9 Mr. Woolf's failure to disclose this paragraph 6 10 led you to believe that there would be no new 11 connections allowed on the current sewer 12 collection system? 13 MR. GAFFNEY: I'll object. 14 THE WITNESS: When I looked at buying a 15 lot in there, they didn't tell me it was on a 16 septic tank. They didn't tell me there was 17 limitations. If they would have told me any of 18 that big picture stuff, I would have never moved 19 into that subdivision. I wouldn't have bought a 20 lot there. 21 Q. (BY MR. SMITH) And it's not the big 22 picture stuff that I'm -- we can focus on that 23 later. Right now I'm focussed on the detail 24 picture stuff. 25 MR. SMITH: Can I have the court</p>	<p style="text-align: right;">Page 314</p> <p>1 know -- I didn't know what I didn't know. They 2 didn't tell me about anything. How could them 3 not telling me about something lead me to believe 4 something? 5 Q. Why does Printcraft Press believe and 6 claim and allege in this case that Mr. Beck and 7 Mr. Woolf should have disclosed paragraph 6, that 8 states that no new connections will be allowed on 9 the current sewer collection system? 10 A. Because Printcraft was looking for a 11 place to put a building, and if Printcraft would 12 have known no new collections -- no new 13 connections will be allowed, then they would have 14 known that they were a new connection. They were 15 not going to be allowed and, therefore, would 16 have went and looked at another development, 17 another building lot. They would have looked 18 elsewhere to locate the building. 19 Q. So aren't you then saying, sir, that 20 Mr. Beck and Mr. Woolf led Printcraft to believe 21 that Printcraft would be allowed to connect to 22 the system? 23 A. Mr. Beck and Mr. Woolf allowed 24 Printcraft to hook up to the system. 25 MR. SMITH: Would you read my question</p>

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1 A. Correct.
 2 Q. Okay. So now, looking in hindsight,
 3 aside from your concerns about maybe it was legal
 4 or not legal, wouldn't you agree that their
 5 leading you to believe that you could hook up to
 6 the system was, in fact, true?
 7 MR. GAFFNEY: The same objection. It's
 8 a non sequitur. It just...
 9 THE WITNESS: In hindsight, yes, I'd
 10 say that's true.
 11 Q. (BY MR. SMITH) The other item I want
 12 to cover is this issue about Printcraft Press
 13 claiming that Mr. Beck and Mr. Woolf should have
 14 disclosed the existence of the third party
 15 beneficiary agreement that either incorporates or
 16 references these rules and regulations. Do you
 17 remember that issue?
 18 A. Yes.
 19 Q. Is it your understanding that the rules
 20 and regulations limit some substances that can go
 21 into the sewer system?
 22 A. Do you have a copy of those?
 23 MR. SMITH: Yeah, if we can take a
 24 break for just a second.
 25 You know, it's lunch. Do we want to

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1 break for lunch now? We could find those during
 2 the lunch break.
 3 MR. GAFFNEY: I'd just as soon push
 4 through because I really need to be someplace at
 5 4:30.
 6 MR. SMITH: What's your preference,
 7 Mr. Fuller?
 8 MR. FULLER: We can't push through
 9 until 6:00.
 10 MR. GAFFNEY: 6:00? How do you get
 11 6:00? You get six hours.
 12 MR. FULLER: Okay. I don't believe we
 13 can push through six straight hours of deposition
 14 today.
 15 MR. GAFFNEY: Well, I think it's the
 16 deponent's choice.
 17 MR. FULLER: I would disagree with
 18 that.
 19 MR. SMITH: And, Counsel, I will
 20 also -- you can object all you want, and you can
 21 make whatever statements you want, too. All of
 22 the time that we've spent going back and trying
 23 to find items in the record that the court
 24 reporter hasn't been able to find, I'd also --
 25 I'm going to ask that we get that time back, so

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1 we can continue to take his deposition, and we
 2 get credit for that.
 3 I will also state on the record that I
 4 think that in all my years of taking depositions,
 5 I've never had a witness ask that a question be
 6 read back so many times. I think it's a stalling
 7 technique.
 8 MR. GAFFNEY: Oh, I think --
 9 MR. SMITH: Let me just finish, and
 10 then you can say what you want to.
 11 So if we can't reach an agreement on
 12 giving me back some of that time, then we'll just
 13 go to the Court and ask for assistance. The
 14 Court was quite clear on the hearing that if
 15 there's any monkey business or delay or stalling,
 16 that he was going to give us some additional
 17 time.
 18 So I'll let you choose what you want to
 19 do on that.
 20 MR. GAFFNEY: Well, I'm going to
 21 suggest, Counsel, that when you ask questions
 22 that really are, to some degree,
 23 incomprehensible, it's good practice for the
 24 witness to have them read back. Because, quite
 25 frankly, some of the questions you're asking are

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1 just almost beyond comprehension, so --
 2 MR. SMITH: Okay. I'm not going to --
 3 and all I'm saying is you either give me
 4 additional time or you don't.
 5 MR. GAFFNEY: Well, I'm not going to
 6 give anybody anything.
 7 MR. SMITH: Okay.
 8 MR. GAFFNEY: No one has given us
 9 anything in this case.
 10 MR. SMITH: Well, I'm asking for
 11 additional time for the time that we spent this
 12 morning searching through the record.
 13 MR. GAFFNEY: Well, we'll --
 14 MR. SMITH: But you're saying you're
 15 not going to give me any additional time?
 16 MR. GAFFNEY: No.
 17 MR. SMITH: Okay.
 18 MR. GAFFNEY: We'll let the judge look
 19 at the transcript.
 20 THE WITNESS: And I'd just as soon push
 21 through and get out of here at 4:00.
 22 MR. SMITH: Well, I need -- I don't
 23 know if I can do that because I have to eat
 24 something. I can't sit here without eating.
 25 It's just me.

24 (Pages 319 to 322)

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<p style="text-align: right;">Page 355</p> <p>1 system."</p> <p>2 Do you agree with that?</p> <p>3 A. Yes.</p> <p>4 Q. Between January of 2006 and December of</p> <p>5 2006, when you were cut off from the sewer</p> <p>6 system, did Mr. Beck or Mr. Woolf or Sunnyside</p> <p>7 ever limit the quality or nature of the materials</p> <p>8 you could discharge into the sewer system?</p> <p>9 A. Yes.</p> <p>10 Q. And when was that? When did that first</p> <p>11 happen?</p> <p>12 A. Late in the year, there was an issue</p> <p>13 raised about water softener brine in the system.</p> <p>14 Q. Okay. When you say "late in the year,"</p> <p>15 when was that?</p> <p>16 A. November, October.</p> <p>17 Q. So would November and October be the</p> <p>18 first date when Mr. Beck or Mr. Woolf or</p> <p>19 Sunnyside ever limited the nature or quality of</p> <p>20 the materials Printcraft discharged into the</p> <p>21 sewer system?</p> <p>22 A. As far as I recall.</p> <p>23 Q. And at that point, what were you -- who</p> <p>24 was the one that imposed the limitation?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 357</p> <p>1 limited in the nature or quality that you could</p> <p>2 discharge. What was the limitation?</p> <p>3 MR. GAFFNEY: I'm going to object to</p> <p>4 that. It requires a legal conclusion.</p> <p>5 THE WITNESS: I don't recall.</p> <p>6 Q. (BY MR. SMITH) Do you have any</p> <p>7 evidence of what the limitation was?</p> <p>8 A. I'd have to go back and look at</p> <p>9 correspondence between Sunnyside Utilities and</p> <p>10 what they were claiming and what they were saying</p> <p>11 I could and couldn't do and then look at the</p> <p>12 documents that are available to me at that point.</p> <p>13 Q. Okay. Let's make sure we're clear on</p> <p>14 this. It is your testimony that the first time</p> <p>15 that you were ever limited by anybody in the</p> <p>16 types of materials you could discharge was in</p> <p>17 October or November of 2006; correct?</p> <p>18 A. That seems to be my recollection of</p> <p>19 when they told me that I couldn't put something</p> <p>20 specific down the drain.</p> <p>21 Q. Okay. And you don't know who the</p> <p>22 "they" was?</p> <p>23 A. Let's just collectively say Sunnyside</p> <p>24 Utilities.</p> <p>25 Q. Okay. And you don't know which person</p>
<p style="text-align: right;">Page 356</p> <p>1 Q. Well, let's see if we can limit it.</p> <p>2 Was it Sunnyside Utilities?</p> <p>3 A. I don't recall if it was Mark Fuller,</p> <p>4 whether it was Sunnyside, whether it was</p> <p>5 Doyle Beck. I don't remember if it was a letter.</p> <p>6 Q. Okay. And were there any other times</p> <p>7 after this incident when you were limited on the</p> <p>8 quality and nature of the substances you could</p> <p>9 discharge into the system?</p> <p>10 A. I don't recall.</p> <p>11 Q. Okay. In November and October of 2006,</p> <p>12 identify for me the substances that you were</p> <p>13 limited in discharging into the system.</p> <p>14 A. I don't know.</p> <p>15 Q. What do you mean you don't know?</p> <p>16 A. I don't know what I was limited -- do</p> <p>17 you mean by legal limits? Do you mean by what</p> <p>18 somebody had said from Sunnyside Utilities?</p> <p>19 Q. Did anybody limit Printcraft Press --</p> <p>20 we're not talking about the gallonage or</p> <p>21 capacity, not the quantity. I'm talking about</p> <p>22 the quality, the type of materials that</p> <p>23 Printcraft could discharge.</p> <p>24 In October or November of 2006, what</p> <p>25 were -- and you said that's when you first were</p>	<p style="text-align: right;">Page 358</p> <p>1 from Sunnyside, whether it was Mr. Beck or</p> <p>2 Mr. Woolf or Mr. Fuller or somebody else?</p> <p>3 A. No.</p> <p>4 Q. Okay. But you're saying in October or</p> <p>5 November of 2006, Sunnyside did identify some</p> <p>6 specific substances that you could not discharge</p> <p>7 into the system?</p> <p>8 A. Correct.</p> <p>9 Q. But you don't know what those are?</p> <p>10 A. I don't recall.</p> <p>11 Q. You don't recall even one of them?</p> <p>12 A. Water softener brine.</p> <p>13 Q. So it's H2O brine. As you sit here</p> <p>14 right now, sir, can you think of any other</p> <p>15 substances that Sunnyside Utilities prevented you</p> <p>16 from discharging into the system?</p> <p>17 A. I don't recall.</p> <p>18 Q. Now, are you saying that you don't</p> <p>19 recall in the sense that there were others but</p> <p>20 you just don't remember, or are you saying "That</p> <p>21 was it; that's all I was precluded from</p> <p>22 discharging into the system"?</p> <p>23 A. I don't remember.</p> <p>24 Q. Okay. What does that mean? What do</p> <p>25 you mean you don't remember?</p>

<p style="text-align: right;">Page 359</p> <p>1 A. I don't remember either of those</p> <p>2 things.</p> <p>3 Q. They're kind of mutually exclusive;</p> <p>4 okay? And I just need to finish this up, and I</p> <p>5 think I'm done for today.</p> <p>6 You're saying that Sunnyside told you</p> <p>7 you couldn't discharge any more water softener</p> <p>8 brine. And are you also saying that there may</p> <p>9 have been other things, you just can't remember</p> <p>10 what they are; or are you saying that they didn't</p> <p>11 tell you anything else that you can even</p> <p>12 remember? There is nothing else, in other words?</p> <p>13 A. I don't remember them saying stop</p> <p>14 putting "X" down the drain, other than water</p> <p>15 softener brine.</p> <p>16 Q. Okay. And did that remain the case</p> <p>17 until Sunnyside disconnected you in December of</p> <p>18 2006?</p> <p>19 A. I don't recall.</p> <p>20 Q. In other words, after this</p> <p>21 October-November time period where Sunnyside</p> <p>22 limited you discharging H2O brine, was there ever</p> <p>23 a time thereafter when Sunnyside limited what</p> <p>24 Printcraft Press could discharge in terms of type</p> <p>25 of material into the sewer system?</p>	<p style="text-align: right;">Page 361</p> <p>1 Mr. Fuller, do you have questions?</p> <p>2 MR. FULLER: I do, but let's take a</p> <p>3 brief break.</p> <p>4 (A recess was taken from 1:48 p.m. to</p> <p>5 1:53 p.m.)</p> <p>6 (Bryan Smith and Doyle Beck were not</p> <p>7 present after the recess.)</p> <p>8 (Exhibit 27 was marked.)</p> <p>9</p> <p>10 EXAMINATION</p> <p>11 BY MR. FULLER:</p> <p>12 Q. Okay. You've been handed what's been</p> <p>13 marked as Exhibit 27. You've already been</p> <p>14 questioned regarding this deposition, but it</p> <p>15 wasn't previously marked as exhibit.</p> <p>16 This is a copy of the amended 30(b)(6)</p> <p>17 subpoena duces tecum which brings us here today.</p> <p>18 I'd ask you to review pages -- beginning at the</p> <p>19 bottom of page 3.</p> <p>20 We've asked Printcraft Press to</p> <p>21 designate a specific witness with regard to</p> <p>22 damages suffered by Printcraft Press. Are you</p> <p>23 the witness to testify on that issue?</p> <p>24 A. Possibly some things, but a lot will</p> <p>25 be -- I'll probably defer to Mr. Smith.</p>
<p style="text-align: right;">Page 360</p> <p>1 A. Say that again, please.</p> <p>2 MR. SMITH: Could you read that back,</p> <p>3 please?</p> <p>4 THE REPORTER: Sure.</p> <p>5 (The last question was read by the</p> <p>6 Reporter.)</p> <p>7 THE WITNESS: Not that I recall.</p> <p>8 MR. SMITH: Okay. That's all of the</p> <p>9 questions I have for today. I'm going to keep</p> <p>10 your deposition open, sir, but that's all I've</p> <p>11 got for now.</p> <p>12 Actually, there is one more thing I do</p> <p>13 have to ask him.</p> <p>14 Q. (BY MR. SMITH) I was handed, during a</p> <p>15 break, a response to your Request for Admission</p> <p>16 No. 9. It says, "Please admit that on or about</p> <p>17 September 20th, 2006, you received the Sunnyside</p> <p>18 Utilities rules and regulations and the third</p> <p>19 party beneficiary agreement from Sunnyside Park</p> <p>20 Utilities."</p> <p>21 What was your answer, sir?</p> <p>22 A. That on or about September 20th I</p> <p>23 received it.</p> <p>24 MR. SMITH: Okay. Thank you. That's</p> <p>25 all I have for now.</p>	<p style="text-align: right;">Page 362</p> <p>1 Q. Okay. You've also been asked to</p> <p>2 testify, on the top of page 4, as to Printcraft</p> <p>3 Press's financial status, including net worth,</p> <p>4 tax returns, and profits. Are you the person to</p> <p>5 testify with regard to that issue?</p> <p>6 A. Yes.</p> <p>7 Q. You've been asked to testify with</p> <p>8 regard to Printcraft Press's claims for fraud by</p> <p>9 omission. Are you the person to testify on that</p> <p>10 issue?</p> <p>11 A. Yes.</p> <p>12 Q. You've been asked to testify with</p> <p>13 regard to Printcraft's -- to produce a witness</p> <p>14 with regard to Printcraft's claim for water</p> <p>15 disconnection. Are you the person to testify on</p> <p>16 that issue?</p> <p>17 A. Yes.</p> <p>18 Q. The next is operation and maintenance</p> <p>19 of the aboveground sewage tanks. Are you that</p> <p>20 person?</p> <p>21 A. Yes.</p> <p>22 Q. Are you also the person, with regard to</p> <p>23 item 7, regarding entry upon property owned by</p> <p>24 Sunnyside Park Utilities?</p> <p>25 A. Yes.</p>

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINTCRAFT PRESS, INC., an)
Idaho corporation,)
)
Plaintiff,)
)
vs.)
)
SUNNYSIDE UTILITIES, INC., an)
Idaho corporation,)
)
Defendant.)
_____)

MINUTE ENTRY
Case No. CV-06-7097

On the 6th day of January, 2009, Defendant Sunnyside Utilities' motion for partial summary judgment and Defendant Beck/Woolf's motion for summary judgment came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Michael Gaffney and Mr. John Avondett appeared on behalf of the Plaintiff.

Mr. Mark Fuller and Mr. Dan Beck appeared on behalf of the Defendant.

Mr. Bryan Smith appeared on behalf of Defendant Doyle Beck and Kirk Woolf.

Mr. Beck presented Defendant's motion for partial summary judgment. Mr. Avondett presented argument in opposition to Defendant's motion. Mr. Smith joined in the motion. Mr. Beck


presented rebuttal argument.

The Court will take the motion under advisement and issue an opinion as soon as possible.

Mr. Smith presented Defendant Beck/Woolf's motion for summary judgment. Mr. Gaffney presented argument in opposition to the motion. Mr. Fuller joined in Mr. Smith's motion. Mr. Smith presented rebuttal argument.

The Court will take the motion under advisement and issue an opinion as soon as possible.

Court was thus adjourned.

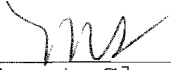

JOEL E. FINGEY
District Judge

H:cv067097.1mo

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of January, 2009, I
caused a true and correct copy of the foregoing document to
be delivered to the following:

RONALD LONGMORE



Deputy Court Clerk

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Mark R. Fuller
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DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO

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9 JAN -8 PM 10

Attorneys for the Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC., an Idaho
corporation, TRAVIS WATERS, an
individual,

Plaintiffs/Counterdefendants,

vs.

SUNNYSIDE PARK UTILITIES, INC., an
Idaho corporation, SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an
Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOOLF, an individual,

Defendants/Counterclaimants.

Case No.: CV-06-7097

ORDER RE: STIPULATION TO
PERFORM DISCOVERY RE: BRIAN
POWELL DEPOSITION

The Court having considered the parties' signed Stipulation to Perform Discovery
re: Brian Powell Deposition, IT IS HEREBY ORDERED that:

The deposition of Brian Powell may be taken after the close of formal discovery
on January 16, 2009. The deposition shall be set at the convenience of all parties and as

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soon as practicable.

IT IS SO ORDERED

DATED: January 7, 2009.


Honorable Joel E. Tingey

CLERK'S CERTIFICATE OF MAILING

I certify that on January 8, 2009, I served a true and correct copy of the

ORDER RE: STIPULATION TO PERFORM DISCOVERY RE: BRIAN POWELL

DEPOSITION on the following by the method of delivery designated below:

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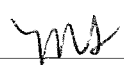
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Clerk of the Court

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9 JUL 15 2010

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLEPRINCRAFT PRESS, INC., an Idaho
corporation,

Plaintiff,

vs.

SUNNYSIDE UTILITIES, INC., and Idaho
Corporation, SUNNYSIDE PARK OWNERS
ASSOCIATION, INC., and Idaho Corporation,
and SUNNYSIDE INDUSTRIAL AND
PROFESSIONAL PARK, LLC, and Idaho
limited liability corporation,

Defendants.

Case No. CV-06-7097

**MEMORANDUM DECISION
AND
ORDER**

This matter comes before the Court upon Defendants Sunnyside Park Utilities, Inc. and Sunnyside Industrial and Professional Park, LLC's (Sunnyside) Motion for Partial Summary Judgment Re: Damages, and Defendant Beck and Woolf's Motion for Summary Judgment. The general facts of this matter have been set out in prior memorandum decisions.

I. STANDARD OF ADJUDICATION

A motion for summary judgment "shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), I.R.C.P.; *Orthman v. Idaho Power Co.*, 130 Idaho 597, 600, 944 P.2d 1360, 1363 (1997). Upon considering a motion for summary judgment, all controverted facts are

liberally construed in favor of the non-moving party. *Friel v. Boise City Housing Authority*, 126 Idaho 484, 485, 887 P.2d 29 (1994). Where a jury will decide the facts at trial, the court must draw all reasonable factual inferences and conclusions in favor of the non-moving party.

Thomson v. Idaho Ins. Agency, Inc., 126 Idaho 527, 529, 887 P.2d 1034, 1036 (1994). In ruling on a motion for summary judgment, the district court is not permitted to weigh the evidence or to resolve controverted factual issues. *Bybee v. Clark*, 118 Idaho 254, 257, 796 P.2d 131, 134 (1990).

The party moving for summary judgment always bears the burden of proving that no genuine issue of material fact exists on an element of the non-moving party's case. If the moving party fails to challenge an element or fails to present evidence establishing the absence of a genuine issue of material fact on that element, the burden does not shift to the non-moving party, and the non-moving party is not required to respond with supporting evidence. *Orthman v. Idaho Power Co.*, at 600, 944 P.2d at 1363.

If the moving party has met its burden by either an affirmative showing of the moving party's evidence or by a review of the non-moving party's evidence, the burden shifts to the non-moving party to establish that a genuine issue for trial does exist. *Id.*; *Navarrette v. City of Caldwell*, 130 Idaho 849, 851, 949 P.2d 597, 599 (1997). To withstand a motion for summary judgment, the non-moving party's case must be anchored in something more than speculation; a mere scintilla of evidence is not enough to create a genuine issue. *Nelson, A.I.A. v. Steer*, 118 Idaho 409, 410, 797 P.2d 117, 118 (1990); *Zimmerman v. Volkswagen of America, Inc.*, 128 Idaho 851, 854, 920 P.2d 67, 70 (1996).

II. ANALYSIS

A. Sunnyside's Motion for Partial Summary Judgment

Sunnyside by its motion seeks to limit damages for which Printcraft can seek recovery. Sunnyside argues that damages suffered by entities other than Printcraft can not be recovered. In general, this Court agrees.

For example, Printcraft is merely a lessee of the subject building. As such, Printcraft can have no claim for damages allegedly arising from the purchase of the property or construction of the building. Argument has further been made about Printcraft's attempts to recover "pass through" costs. The Court agrees in principle that "pass through" costs from a non-party to Printcraft, of which Sunnyside would have no knowledge or expectation, would not be recoverable.

However, the Court can not fully determine at this time what pass through costs, if any, are asserted by Printcraft. A more definitive ruling may need to be made at the time of trial. Ultimately, recoverable damages, if any, will be limited to those proximately caused by the wrongful actions of Defendants. Such is typically a jury question. *Appel v. LePage*, 135 Idaho 133, 137, 15 P.3d 1141, 1145 (2000) ("Generally, a question of [causation and] foreseeability constitutes a question of fact for determination by a jury . . .").

Sunnyside also seeks to preclude Printcraft from claiming damages for collecting and hauling sewage, and subsequently connecting to a different sewage treatment provider. There are arguably two interrelated causes for such alleged damages. Printcraft argues that the expenses arose from the alleged nondisclosures, which induced Printcraft to move into the building in the first place i.e., it never would have relocated and incurred the expenses if there had been no nondisclosures. Conversely, Sunnyside asserts that the alleged damages are solely attributable to Printcraft's unlawful discharge of illegal waste requiring a termination of its line to the septic system. Again, it is worth noting that such alleged damages can not be based upon

Sunnyside's termination of septic service since the Court has previously determined that such action was not wrongful.

There are a number of factors to be considered when determining whether an act has proximately resulted in alleged damages.

"The general rule on damages for breach of contract is that they 'are not recoverable unless ... clearly ascertainable both in their nature and origin, and unless it is also so established that they are the natural and proximate consequence of the breach and are not contingent or speculative.' " *Wing v. Hulet*, 106 Idaho 912, 918, 684 P.2d 314, 320 (Ct.App.1984) (quoting *Telluride Power Co. v. Williams*, 172 F.2d 673, 675 (10th Cir.1949)). Damages must be proven with reasonable certainty. *Id.* However, "[t]he law does not require rigid certainty ... [r]ather, it requires ... that the evidence be sufficient to support a reasonable inference of causation and to allow a jury reasonably to treat that inference as more probable than an inference connecting the loss to other causes unrelated to the defendant's conduct." *Id.* at 919, 684 P.2d at 321.

General Auto Parts Co., Inc. v. Genuine Parts Co., 132 Idaho 849, 859, 979 P.2d 1207, 1217 (1999).

In order to establish fraud, a plaintiff must prove, inter alia, that a misrepresentation was material and that reliance upon the misrepresentation proximately caused the plaintiff's injury. E.g., *Faw v. Greenwood*, 101 Idaho 387, 613 P.2d 1338 (1980). Although closely related, these requirements are conceptually distinct. Materiality refers to the importance of the misrepresentation in determining the plaintiff's course of action; proximate cause refers to the causal link between the plaintiff's act of reliance and his subsequent injury.

Edmark Motors, Inc. v. Twin Cities Toyota, Inc., 111 Idaho 846, 727 P.2d 1274, 1276 (Idaho App. 1986).

As evident from the foregoing and the applicable case law, it is for a jury to consider the various factors and determine causation between competing arguments and evidence. This Court finds that whether any wrongful act of Sunnyside proximately caused damages to Printcraft in the form of collecting, hauling, etc. sewage is a jury question.

The Parties also argue as to whether Printcraft's lease was month to month or for a period of ten years. The Court finds that there are disputed facts on this issue precluding summary judgment as a matter of law. A jury will need to determine the nature of Printcraft's lease agreement, and what damages if any arise from the lease.

B. Beck and Woolf's Motion for Summary Judgment.

In their motion, Beck and Woolf argue that Plaintiff's claims of fraudulent nondisclosure should be dismissed on two grounds: (1) Plaintiff had no right to rely upon any alleged nondisclosure and (2) the evidence does not support such a claim.

As to the right to rely, Beck and Woolf assert that since Sunnyside was justified in terminating the connection to the septic system, Printcraft had no right to rely upon any nondisclosure as to whether the septic system could handle Printcraft's waste discharge. The Court generally agrees with this proposition however this is only part of the analysis.

As set out in the briefing and record, a number of issues existed as to the capacity, number of connections, District Seven limitations, utility agreement, etc. These issues existed at the time Printcraft decided to relocate. Printcraft asserts that had it known of these matters, it would not have relocated. Arguably, these alleged nondisclosures are separate and distinct from an alleged nondisclosure as to Sunnyside's ability to handle all discharge from Printcraft including the illegal discharge.

Accordingly, the Court does find that there can be no justifiable reliance as to any alleged nondisclosure relating to Sunnyside's ability to handle all of Printcraft's actual waste water. However, whether there was justifiable reliance as to the other alleged

nondisclosures is an issue for the jury. *Perkins v. Thorpe*, 106 Idaho 138, 142, 676 P.2d 52, 56 (App.1984).

Beck and Woolf further argue that Printcraft can not meet one of the requirements of a claim for fraudulent nondisclosure i.e., that Beck and Woolf had knowledge that Printcraft was unaware of the issues which forms the basis for the alleged nondisclosures. As set out in *Sowards v. Rathbun*, 134 Idaho 702, 707, 8 P.3d 1245, 1250 (2000):

Silence may constitute fraud when a duty to disclose exists. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 808 P.2d 851 (1991); *Tusch Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d 1022 (1987); *Bethlahmy v. Bechtel*, 91 Idaho 55, 415 P.2d 698 (1966); *Janinda v. Lanning*, 87 Idaho 91, 390 P.2d 826 (1964). A party may be under a duty to disclose: (1) if there is a fiduciary or other similar relation of trust and confidence between the two parties; (2) in order to prevent a partial statement of the facts from being misleading; or (3) if a fact known by one party and not the other is so vital that if the mistake were mutual the contract would be voidable, and the party knowing the fact also knows that the other does not know it. *Bethlahmy*, supra. [emphasis added]

It is again worth noting that in a prior decision, this Court held that Printcraft's fraud claim is limited to whether "Sunnyside Utilities had a duty to disclose under the third prong listed by the *Sowards* Court." Memorandum Decision and Order, August 31, 2007.

For purposes of this motion, the Court assumes (and it does not appear to be disputed) that Printcraft had no knowledge as to the limitations/restrictions applicable to the septic system. The issue then is whether, as a matter of law, there is no evidence that Beck or Woolf knew that Printcraft did not have that knowledge.

Printcraft has presented evidence supporting the inference that Beck and Woolf knew that Printcraft did not know of material issues relating to the septic system, since (arguably) such information could only have been obtained from Beck or Woolf. Such

an inference precludes granting summary judgment on this issue. It is worth noting that the decision in *Sowards*, wherein it was found that the plaintiff had failed to prove the “knowledge” element of a nondisclosure claim, was based on a finding of fact by the trier of fact, after all evidence was presented at the time of trial. Similarly, this Court finds that the issue of Beck and Woolf’s knowledge is a question for the trier of fact.

IV. CONCLUSION AND ORDER

Based on the foregoing, Sunnyside’s Motion for Partial Summary Judgment is granted in part, and denied in part, as set out above. Beck and Woolf’s Motion for Summary Judgment is denied.

DATED this 14 day of January, 2009.


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of January, 2009, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

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RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By ms
Deputy Clerk

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2007 JUN 17 11:25
CLERK
CLERK

ATTORNEY FOR DEFENDANT/COUNTER CLAIMANT SUNNYSIDE PARK UTILITIES, INC.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF BONNEVILLE**

PRINTCRAFT PRESS, INC., an)
Idaho corporation,)

Plaintiff,)

v.)

SUNNYSIDE PARK UTILITIES,)
INC., an Idaho corporation,)
SUNNYSIDE PARK OWNERS)
ASSOCIATION, INC., an Idaho)
corporation, SUNNYSIDE)
INDUSTRIAL AND PROFESSIONAL)
PARK, LLC, an Idaho limited)
liability corporation, DOYLE)
BECK, an individual, and KIRK)
WOOLF, an individual.)

Defendants.)

SUNNYSIDE PARK UTILITIES,)
INC., an Idaho corporation,)
and SUNNYSIDE INDUSTRIAL AND)
PROFESSIONAL PARK, LLC, an)
Idaho limited liability)
corporation.)

Counterclaimants,)

v.)

PRINTCRAFT PRESS, INC., an)
Idaho corporation, and TRAVIS)
WATERS, an individual.)

Counter-defendants.)

Case No. CV-06-7097

**SUNNYSIDE PARK UTILITIES,
INC.'S ANSWER TO THIRD
AMENDED COMPLAINT, AMENDED
COUNTERCLAIMS, PRAYER FOR
PUNITIVE DAMAGES AGAINST
PRINTCRAFT PRESS AND TRAVIS
WATERS AND DEMAND FOR JURY
TRIAL**

COMES NOW the Defendant, Sunnyside Park Utilities, Inc., an Idaho corporation (hereafter "Sunnyside Park Utilities"), and in response to the Third Amended Complaint filed by Plaintiff, states and alleges as follows:

1. Defendant denies each and every allegation set forth in the Amended Complaint except as expressly admitted herein.

2. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

3. In response to paragraph 1, Defendant denies that this is an action arising out of certain disclosures the Defendant failed to make. Defendant asserts that this is an action arising out of the disconnection of Printcraft Press's sewer connection to Sunnyside Park Utilities' septic system. The Defendant admits that there is a central septic system located in the Sunnyside Industrial and Professional Park subdivision which is operated and maintained by Sunnyside Park Utilities.

4. In answer to paragraphs 2, 3, 4, 5, 6, and 7 Defendant admits the same.

5. In answer to paragraphs 8 and 9 Defendant admits the same.

6. In answer to paragraph 10, Defendant admits that Sunnyside Industrial and Professional Park, LLC (hereafter "SIPP") completed and filed with District Seven Health Department a septic permit for the installation of a septic system that would service a minimum of one to two buildings. Defendant admits that a copy of District Seven Health Department's septic permit is attached as Exhibit "A" to the Complaint.

7. In answer to paragraph 11, Defendant admits the same.

8. In answer to paragraph 12, Defendant admits the same.

9. In answer to paragraph 13, Defendant admits that on August 4, 1999, SIPP and Bonneville County entered into a Development Agreement. The Defendant denies that SIPP promised to provide all street improvements and utilities as were necessary to be completed. The agreement specifically states that the "owner(s)" will construct said needed utility or street improvements. The agreement does not obligate the "Developer" to construct needed utility or street improvements.

10. In answer to paragraph 14, Defendant admits the same.

11. In answer to paragraph 15, Defendant denies the same.

12. In answer to paragraph 16, Defendant admits the same.

13. In answer to paragraph 17, Defendant admits that a meeting was held. However, Defendant denies the remainder of the allegations contained in paragraph 17.

14. In answer to paragraph 18, Defendant admits the same.

15. In answer to paragraph 19, Defendant denies that the letter sent by District Seven Health Department memorialized the meeting held on March 29, 2002. Defendant admits that the letter attached as Exhibit "F" to Plaintiff's complaint is a true and correct copy of the letter sent by District Seven Health Department. Defendant denies all other allegations.

16. In answer to paragraph 18 [sic], Defendant denies that it entered into an agreement with the Defendant Sunnyside Park Owners Association, Inc. (hereafter "SPOA") for the providing of water and sewer services to the subdivision identified in the plat

map. Defendant asserts that it entered into an agreement with SPOA, to provide sewer services present and future owners and occupants of any subdivisions which were being or might one day be served by Sunnyside Park Utilities' sewer facilities.

17. In answer to paragraph 19 [sic], Defendant responds that the Third Party Beneficiary Utility Agreement speaks for itself as to its terms.

18. In answer to paragraph 20, Defendant admits that the Third Party Beneficiary Agreement states: "This Agreement shall also be binding upon and shall inure to the benefit of...all present and future owners or occupants." Defendant denies the remainder of paragraph 20.

19. In answer to paragraph 21, see answer to paragraph 19[sic] above.

20. In answer to paragraph 22, Defendant denies that the Agreement is only binding on Plaintiff if the Agreement was recorded. Defendant specifically denies that the Agreement contains specific language in several places indicating that the Third Party Beneficiary Agreement would be recorded "so as to put all persons on notice that any properties receiving sewer services would be subject to the terms of the Agreement." Defendant admits that a true and correct copy of the Third Party Beneficiary Utility Agreement is attached as Exhibit "G" to plaintiff's Complaint.

21. In answer to paragraph 23, Defendant denies the same.

22. In answer to paragraph 24 and 25, Defendant admits the same.

23. In answer to paragraph 26, Defendant admits that on or about September 12, 2005 CTR Development, LLC, the owner of the property at that time, entered into an agreement with Sunnyside Park Utilities for a sewer connection and paid the \$1,800.00 connection fee. Sunnyside Park Utilities thereafter allowed the sewer connection to be made to the building currently occupied by Plaintiff. Defendant admits that a true and correct copy of Check No. 5896 issued by CTR Development, LLC., to Sunnyside Park Utilities is attached as Exhibit "I" to Plaintiff's Third Amended Complaint.

24. In answer to paragraph 27, Defendant has no knowledge concerning the alleged lease agreements and therefore denies the same. Defendant was not a party to the described leases.

25. In answer to paragraph 28, Defendant admits that Sunnyside Industrial and Professional Park, LLC., was provided incomplete copies of drawings or proposed drawings concerning the building which would be built and located on the premises. Defendant does not have sufficient information to determine the entity which provided the documents. Therefore, Defendant cannot admit or deny that Plaintiff provided the drawings.

26. In answer to paragraph 29, Defendant denies the same.

27. In answer to paragraph 30, Defendant denies the same.

28. In answer to paragraph 31, Defendant admits that either Plaintiff or CTR Development provided the document attached as Exhibit "K". Defendant denies that it received a fourth page showing the floor plan or layout of the second floor. Defendant was verbally informed that the second floor was to be used solely

for storage.

29. In answer to paragraph 32, Defendant admits the same.

30. In answer to paragraph 33, Defendant admits that there were connections to the sewer system operated by Defendant in June of 2006. Defendant admits that one of the sewer connections was to the property owned by J&LB Properties and that Plaintiff was occupying J&LP Properties' building as a month-to-month tenant. Defendant denies the remainder of the allegations in paragraph 33.

31. In answer to paragraph 34, Defendant admits that in June 2006, Defendant's sewer system experienced a temporary overload as the result of excessive discharges from Printcraft. The cause of the overload was unknown to Defendant at that time. Defendant admits that it immediately reported the temporary overload to District Seven Health Department and that an onsite investigation was conducted by District Seven Health Department. Defendant denies the remainder of paragraph 34.

32. In answer to paragraph 35, Defendant admits that a true and correct copy of the June 28, 2006 letter from District Seven Health Department to SIPP and Sunnyside Park Utilities is attached as Exhibit "L" to Plaintiff's Third Amended Complaint. Defendant denies the remainder of the allegations in paragraph 35.

33. In answer to paragraph 36, Defendant admits that a true and correct copy of the July 6, 2006 letter is attached as Exhibit "M" to Plaintiff's Third Amended Complaint. Defendant denies the remainder of the allegations in paragraph 36.

34. In answer to paragraph 37, Defendant admits that a septic permit for installation of additional capacity was

obtained. Defendant admits that a true and correct copy of the septic permit is attached as Exhibit "N" to Plaintiff's Third Amended Complaint. Defendant denies the remainder of the allegations in paragraph 37.

35. In answer to paragraph 38, Defendant admits that District Seven Health Department physically inspected the installation of the expansion and repairs of the septic system. Defendant admits that a true and correct copy of the Septic System Inspection Report is attached to Plaintiff's Third Amended Complaint as Exhibit "O." Defendant denies the remainder of paragraph 38.

36. In answer to paragraph 39, Defendant responds that the letter attached as Exhibit "P" speaks for itself. Defendant denies all other allegations.

37. In answer to paragraph 40, Defendant admits that a copy of the August 23, 2006 letter from Doyle Beck is attached as Exhibit "Q" to Plaintiff's Third Amended Complaint. Defendant denies the remainder of the allegations in paragraph 40.

38. In answer to paragraph 41, Defendant admits that a copy of the September 13, 2006 letter from Greg Crockett is attached as Exhibit "R" to Plaintiff's Third Amended Complaint. Defendant denies the remainder of the allegations in paragraph 41.

39. In answer to paragraph 42, Defendant admits that a copy of the September 6, 2006 letter from Doyle Beck is attached to Plaintiff's Third Amended Complaint as Exhibit "S". Defendant denies the remainder of paragraph 42.

40. In answer to paragraph 43, Defendant admits that

Plaintiff requested from Sunnyside Park Utilities a copy of all documents, contracts, agreements, or the like governing Sunnyside Park Utilities' sewer utility services. Defendant denies the remainder of the allegations in paragraph 43.

41. In answer to paragraph 44, Defendant admits that the Third Party Beneficiary Utility Agreement and the Rules and Regulations were provided to Printcraft. Defendant admits that a true and correct copy of Doyle Beck's September 20, 2006 letter is attached as Exhibit "T" to Plaintiff's Third Amended Complaint. Defendant denies the remainder of paragraph 44.

42. In answer to paragraph 45, Defendant admits that Sunnyside Park Utilities and the plaintiff met in compromise negotiations at the plaintiff's premises to discuss the issues of the plaintiff's discharges and other compromise negotiations. Defendant admits that plaintiff later agreed to collect and dispose of all substances Sunnyside Park Utilities classified as "processed waste" which Sunnyside Park Utilities classifies as any non-human wastes. Defendant admits that Plaintiff's counsel memorialized the agreement in a letter and that a true and correct copy of such letter is attached as Exhibit "U" to plaintiff's Third Amended Complaint.

43. In answer to paragraph 46, Defendant admits that Kirk Woolf met with the Plaintiff. Defendant admits that the Plaintiff asserted to Mr. Woolf that the Flexo ink was aqueous in nature and not harmful. Defendant denies the remainder of the allegations in paragraph 46.

44. In answer to paragraph 47, Defendant admits that a true

and correct copy of the October 2, 2006 District Seven Health Department letter is attached as Exhibit "V" to plaintiff's Third Amended Complaint. Defendant denies the remainder of the allegations in paragraph 47.

45. In answer to paragraph 48, Defendant admits that a true and correct copy of the October 5, 2006 District Seven Health Department letter is attached as Exhibit "W" to the Plaintiff's Third Amended Complaint. Defendant denies the remainder of the allegations in paragraph 48.

46. In answer to paragraph 49, Defendant admits that a dispute arose between District Seven Health Department and the Defendant. Defendant asserts that the only issue related to the dispute between District Seven Health Department and the Defendant was the temporary overload caused by Plaintiff in June of 2006. Defendant admits that a true and correct copy of the Corrected Notice of Intent to Re-impose Sanitary Restrictions, dated November 21, 2006, is attached as Exhibit "X" to Plaintiff's Third Amended Complaint.

47. In answer to paragraph 50, Defendant admits the same, but asserts that District Seven Health Department had no jurisdiction to re-impose sanitary restrictions.

48. In answer to paragraph 51, Defendant admits that Sunnyside Park Utilities sent the letter attached as Exhibit "Z" to Plaintiff's Third Amended Complaint. Defendant asserts that the statements therein speak for themselves. Defendant denies the remainder of paragraph 51.

49. In answer to paragraph 52, Defendant admits that

Sunnyside Park Utilities received a letter dated December 12, 2006 from Printcraft and that such letter is attached as Exhibit "AA" to Plaintiff's Third Amended Complaint. Defendant asserts that such letter speaks for itself. Defendant denies the remainder of paragraph 52.

50. In answer to paragraph 53, Defendant admits that Sunnyside Park Utilities sent the letter attached as Exhibit "BB" to the Plaintiff's Third Amended Complaint. Defendant asserts that the statements therein speak for themselves. Defendant denies the remainder of paragraph 53.

51. In answer to paragraph 54, Defendant admits that it severed the sewer connection on December 15, 2006. Defendant does not have sufficient information to either admit or deny the remainder of the allegations in paragraph 54, and therefore denies the same.

52. In answer to paragraph 55, Defendant admits that Sunnyside Park Utilities has provided documents to plaintiff establishing that Sunnyside Park Utilities' sewer system's capacity from 1996 when it was first constructed and installed through June of 2006 was in the amount of 500 gallons per day. Defendant also admits that Sunnyside Park Utilities' sewer system capacity after June 2006 was in the total capacity of 2,000 gallons per day. Defendant admits that evidence of Sunnyside Park Utilities' sewer system capacities are attached as Exhibit "CC" to Plaintiff's Third Amended Complaint. Defendant denies the remainder of paragraph 55.

53. In answer to paragraph 56, Defendant admits that

Sunnyside Park Utilities provided documentation to Plaintiff that Sunnyside Park Utilities measured sewer discharge into Sunnyside Park Utilities' sewer system from February 6, 2007 through May 16, 2007, and that the average amount of such discharges were approximately 370 gallons per day. Defendant admits that a true and correct copy of Sunnyside Park Utilities' calculations and measurements are attached as Exhibit "DD" to Plaintiff's Third Amended Complaint. Defendant denies the remainder of paragraph 56.

54. In answer to paragraph 57, Defendant admits that it has sufficient capacity to receive all legal sewer discharges in accordance with the terms of the contract entered into by the parties on September 26, 2006. Defendant admits that plaintiff has demanded reconnection and that Defendant has refused to allow such a reconnection because of the plaintiff's intention to discharge illegal substances and quantities prohibited by Defendant's Rules and Regulations, the agreement entered into by the parties on September 26, 2006, and applicable state and federal law.

55. In answer to paragraph 58, Defendant denies the same.

56. In answer to paragraph 59, Defendant re-alleges and restates all the admissions and denials set forth above in paragraphs 1 through 55 and incorporates the same by reference.

57. In answer to paragraph 60, Defendant admits the same.

58. In answer to paragraph 61, Defendant denies the same.

59. In answer to paragraph 62, Defendant denies the same.

60. In answer to paragraph 63, Defendant denies the same.

61. In answer to paragraph 64, Defendant denies the same.

62. In answer to paragraph 65, Defendant denies that it did

not record the Third Party Beneficiary Agreement. Defendant denies that it provided sewer services to the Plaintiff merely because Plaintiff was an occupant of the Sunnyside Industrial and Professional Park Subdivision. Services were provided pursuant to the contract entered into by the parties on September 26, 2006.

63. In answer to paragraph 66, Defendant denies the same.

64. In answer to paragraph 67, Defendant denies the same.

65. In answer to paragraph 68, Defendant admits that it severed the sewer connection. Defendant denies the remainder of the allegations in paragraph 68.

66. In answer to paragraph 69, Defendant denies the same.

67. In answer to paragraph 70, Defendant denies the same.

68. In answer to paragraph 71, Defendant admits the same.

69. In answer to paragraph 72, Defendant admits the same.

70. In answer to paragraph 73, Defendant denies the same.

71. In answer to paragraph 74, Defendant denies the same.

72. In answer to paragraph 75, Defendant hereby re-alleges and re-states all the admissions and denials set forth above in paragraphs 1 through 71 and incorporates the same herein by reference as if set forth fully.

73. In answer to paragraph 76, Defendant denies the same.

74. In answer to paragraph 77, Defendant denies the same.

75. In answer to paragraph 78, Defendant denies the same.

76. In answer to paragraph 79, Defendant denies the same.

77. In answer to paragraph 80, Defendant denies the same.

78. In answer to paragraph 81, Defendant hereby re-alleges and restates its admissions and denials to paragraphs 1 through 77

as set forth herein.

79. In answer to paragraph 82, Defendant denies District Seven Health Department provided a permit for only "one to two buildings" to be connected to Defendant's building. Defendant asserts that such permit provided for a minimum of "one to two buildings." Defendant admits that District Seven Health Department indicated in April of 2002 that no new sewer connections were to be made to the existing system, but affirmatively states that District Seven Health Department had no jurisdiction over Defendant's system. Defendant denies that such "indication" had any legally binding effect on Defendant's sewer system or Defendant's ability to connect additional buildings to Defendant's sewer system.

80. In answer to paragraph 83, Defendant denies the same.

81. In answer to paragraph 84, Defendant denies the same.

82. In answer to paragraph 85, Defendant denies the same.

83. In answer to paragraph 86, Defendant denies the same.

84. In answer to paragraph 87, Defendant denies the same.

85. In answer to paragraph 88, Defendant denies the same.

86. In answer to paragraph 89, Defendant denies the same.

Defendant denies each and every subpart of paragraph 89.

87. In answer to paragraph 90, Defendant denies the same.

88. In answer to paragraph 91, Defendant denies the same.

89. In answer to paragraph 92, Defendant hereby re-alleges and re-states its admissions and denials to paragraphs 1 through 91 as set forth herein.

90. In answer to paragraph 93, Defendant denies the same.

91. In answer to paragraph 94, Defendant denies the same.
Defendant denies each and every subpart of paragraph 94.

92. In answer to paragraph 95, Defendant denies the same.

93. In answer to paragraph 96, Defendant denies the same.

94. In answer to paragraph 97, Defendant denies the same.

95. In answer to paragraph 98, Defendant denies the same.

96. In answer to paragraph 99, Defendant denies the same.

97. In answer to paragraph 100, Defendant denies the same.

98. In answer to paragraph 101, Defendant denies the same.

99. In answer to paragraph 102, Defendant hereby re-alleges and re-states its admissions and denials to paragraphs 1 through 101 as set forth herein.

100. In answer to paragraph 103, Defendant denies the same.

101. In answer to paragraph 104, Defendant denies the same.

102. In answer to paragraph 105, Defendant denies the same.

103. In answer to paragraph 106, Defendant denies the same.

104. In answer to paragraph 107, Defendant denies the same.

105. In answer to paragraph 108, Defendant admits that Plaintiff requested any and all documents that would be associated with the property and sewer services provided by Sunnyside Park Utilities. Defendant admits that on September 20, 2006, Sunnyside Park Utilities provided Plaintiff with a copy of the Third Party Beneficiary Utility Agreement and the Sunnyside Park Utilities Rules and Regulations. Defendant denies the remainder of paragraph 108.

106. In answer to paragraph 109, Defendant denies the same.

107. In answer to paragraph 110, Defendant denies the same.

Defendant denies each and every subpart of paragraph 110.

108. In answer to paragraph 111, Defendant denies the same.

109. In answer to paragraph 112, Defendant denies the same.

110. In answer to paragraph 113, Defendant denies the same.

111. In answer to paragraph 114, Defendant denies the same.

112. In answer to paragraph 115, Defendant hereby re-alleges and re-states its admissions and denials to paragraphs 1 through 114 as set forth herein.

113. In answer to paragraph 116, Defendant denies the same.

114. In answer to paragraph 117, Defendant realleges and restates all the admissions and denials set forth above in paragraphs 1 through 113 and incorporates the same by reference.

115. In answer to paragraphs 118, 119 and 120, Defendant denies the same.

AFFIRMATIVE DEFENSES

116. To the extent Plaintiff has failed to satisfy and/or comply with all terms, conditions and provisions, and/or perform all of its obligations under the Third Party Beneficiary Utility Agreement, Sunnyside Park Utilities' Sewer Rules and Regulations, and the terms of the contract entered into between the parties on September 26, 2006, Plaintiff's claims are barred and Defendant is excused from any duty or performance claimed by Plaintiff.

117. Defendant asserts that the Plaintiff lacks standing to pursue the claims alleged on behalf of any non-party.

118. Plaintiff's damages are barred by the doctrine of accord and satisfaction.

119. Defendant asserts that Plaintiff's claims are barred by

lack of privity and that Plaintiff is at most an incidental beneficiary of any agreement.

120. Defendant asserts that it has no fiduciary or confidential relationship with the Plaintiff.

121. Plaintiff's claims are barred by Plaintiff's prior and continuing breach of the contracts.

122. Plaintiff's claims are barred as a result of Plaintiff's own illegal acts.

123. To the extent Plaintiff failed to minimize or avoid some or all of the damage alleged in the Third Amended Complaint, any recovery against this defendant must be reduced in whole or in part by the amount attributable to such failures.

124. Defendant asserts that if Plaintiff is deemed to be entitled to any award of damages against defendant, such award must be offset by amounts owed to Defendant by Plaintiff as set forth in Defendant's Counterclaims hereafter.

125. Plaintiff's Third Amended Complaint, and each claim therein, is barred by the doctrines of waiver and/or estoppel.

126. Plaintiff's Third Amended Complaint, and each claim therein, is barred by the doctrine of independent intervening cause.

127. The Third Amended Complaint and each claim therein, is barred by the doctrine of laches.

128. The Third Amended Complaint, and each claim therein, is barred by the doctrine of unclean hands.

129. Plaintiff has failed to join one or more indispensable parties to this litigation.

130. The claims in the Third Amended Complaint are barred by the doctrine of illegality. Defendant cannot contract with Plaintiff to commit an illegal act and enforcement of any such contract is barred. IDAPA 58.01.03.004 prohibits discharge of cooling water, backwash or back flush water, air conditioning water, water softener brine or flows which exceed the design flow of the system, without prior authorization from the Director of the Department of Environmental Quality. Plaintiff discharged and seeks to discharge the above prohibited substances and excessive flows of process water into the system. Plaintiff has not obtained approval from the Director for discharge of such substances or discharge of flows which exceed the system design and therefore any such discharges into the system would be and are illegal.

131. Plaintiff has failed to set forth its claims with sufficient particularity to permit Defendant to raise all appropriate defenses, and therefore, Defendant reserves the right to seek leave of court to amend or supplement its Answer, including affirmative defenses, to specify further grounds for denying the claims and causes of action that are the subject of this action.

132. By reason of the filing of Plaintiff's Third Amended Complaint, Sunnyside Park Utilities has been required to retain the services of an attorney to defend this action and has incurred attorney fees and costs in such defense. In accordance with IRCP 54, Idaho Code §12-120, Idaho Code §12-121, Idaho Code §12-123, IRCP 11(a)(1), and the Sewer Rules and Regulations, Article IV, Section 2, Sunnyside Park Utilities is entitled is reimbursement

of all attorney fees, expenses, and losses incurred herein in defense of Plaintiff's Third Amended Complaint and as a result of Plaintiff's actions.

COUNTERCLAIMS

Sunnyside Park Utilities, Inc., hereby alleges the following counterclaims against Printcraft Press, Inc., pursuant to IRCP 13:

FACTS COMMON TO ALL COUNTERCLAIMS

1. Sunnyside Park Utilities, Inc., (hereafter "Sunnyside Park Utilities") is an Idaho corporation with its principle place of business in Bonneville County, Idaho.

2. Sunnyside Park Utilities engages in the business of providing water and sewer service to the owners and occupants of certain properties, buildings, and other improvements in accordance with the Third Party Beneficiary Utility Agreement and Sunnyside Park Utilities' Rules and Regulations.

3. Printcraft Press, Inc., (hereafter "Printcraft") is an Idaho corporation with its principle place of business located at 3834 South Professional Way, Idaho Falls, Bonneville County, Idaho.

4. Travis Waters, at all relevant times, was an officer and owner of Printcraft Press, Inc., and is an individual residing in Bonneville County, Idaho.

5. That jurisdiction and venue of this action arise in Bonneville County, State of Idaho.

6. That pursuant to an agreement with CTR Development, LLC., (hereafter "CTR Development") Sunnyside Park Utilities agreed to provide water and sewer service to the building located

at 3834 South Professional Way, (hereafter "the property").

7. That on or about September 12, 2005 Travis Waters acting on behalf of CTR Development and Printcraft Press provided blueprints of a building being constructed by CTR Development on the property.

8. That Doyle Beck on behalf of Sunnyside Industrial and Professional Park, LLC and Sunnyside Park Utilities, Inc. asked Travis Waters what the sewage needs for the building would be and Mr. Waters stated that there would be sewage from 30 employees.

9. Provision of water and sewer services to CTR Development and its tenant, Printcraft Press, Inc., was to be regulated by the Sunnyside Park Utilities' Rules and Regulations, the Third Party Beneficiary Utility Agreement, and applicable state and federal law, rules and regulations. That a copy of such Agreement and applicable Rules and Regulations are attached as Exhibits "A" and "B" to Plaintiff's Original Complaint.

10. In January of 2006, CTR Development sold the property and any rights to use Sunnyside Park Utilities' sewer services to J&LB Properties, Inc.

11. J&LB Properties, Inc., thereafter entered into a written lease agreement with CTR Management, LLC. (hereafter "CTR Management"). The lease agreement specifically provided that the lessee, CTR Management, was responsible for furnishing and paying for all utilities and that J&LB Properties had no obligation to furnish any utilities to the building. That a copy of such Lease Agreement is attached as Exhibit "J" to Plaintiff's Third Amended Complaint.

12. Printcraft is a sub-tenant in the subject property pursuant to an oral, month-to-month sub-lease agreement between Printcraft and CTR Management, and possesses no other rights in the subject property.

13. Printcraft began discharging wastes into Sunnyside Park Utilities sewer system on or after January 23, 2006.

14. Printcraft's discharges included sewage from 40 or more employees, hazardous chemicals, water softener brine, reverse osmosis water, fountain concentrate, isopropyl alcohol, ink, and multiple other discharges that were harmful to Sunnyside Park Utilities' sewer system, including flows beyond the capacity of Sunnyside Park Utilities' sewer system.

15. Neither Printcraft, nor Travis Waters, ever informed Sunnyside Park Utilities that the lease agreement with J&LB Properties specifically excluded CTR Management and Printcraft Press from using J&LB Properties' rights to the sewer connection with Sunnyside Park Utilities.

16. Printcraft Press either negligently did not read, or intentionally did not obey the multiple warnings and prohibitions contained in the Material Safety Data Sheets for the noxious and hazardous chemicals Printcraft discharged into the Sunnyside Park Utilities' sewer system.

17. On or about June 9, 2006, Printcraft's discharges caused Sunnyside Park Utilities' sewer system to overload and caused sewage to pond on the ground near Sunnyside Park Utilities' drain field.

18. Defendant observed significant quantities of ink in the

sewage on the ground as a result of the June 9, 2006 overload.

19. On or about July 2, 2006, Sunnyside Park Utilities obtained a temporary expansion permit and increased the capacity of the sewer system in order to avoid future overloads of the system. At that time Sunnyside Park Utilities was still unaware of all the various types and quantities of discharges by Printcraft into the sewer system.

20. In August 2006, Sunnyside Park Utilities discovered that Printcraft had been discharging reverse osmosis water, ink, chemicals, water softener brine and other harmful and illegal substances into the sewer system.

21. On or about September 6, 2006 Sunnyside Park Utilities specifically informed Printcraft that the sewer system was only designed to accommodate human waste and that Printcraft needed to restrict its discharge quantities and cease discharging chemicals, processed water, and ink into the sewer system.

22. On or about September 20, 2006, Sunnyside Park Utilities provided Printcraft with a copy of the Third Party Beneficiary Utility Agreement and Sunnyside Park Utilities' Rules and Regulations.

23. On September 26, 2006, Printcraft Press after receipt of the Third Party Beneficiary Agreement and the Rules and Regulations acknowledged that it was aware of the system limitations and of Sunnyside Park Utilities' disputes with the Department of Environmental Quality and District Seven Health Department as a result of the June, 2006 overload, and Printcraft contracted to collect and dispose of all substances that Sunnyside

Park Utilities classified as "processed wastes," including all reverse osmosis water, in exchange for future sewer services.

24. During December of 2006, Sunnyside Park Utilities discovered that Printcraft continued discharging substances that Sunnyside Park Utilities classified as "processed wastes."

25. On December 11, 2006, Sunnyside Park Utilities sent a letter to Printcraft, demanding that Printcraft cease all discharges of "processed wastes" immediately.

26. On December 13, 2006, Sunnyside Park Utilities again requested that Printcraft cease all discharges of "processed wastes" and informed Printcraft that Printcraft must allow monitoring of its discharges if Printcraft desired to continue receiving sewer services. Printcraft refused to allow its discharges to be monitored only because Printcraft was knowingly and intentionally discharging "processed wastes" and had no intention of ceasing to discharge "processed wastes" despite the contract reached between Printcraft and Sunnyside Park Utilities on or about September 26, 2006.

27. On December 15, 2006, Sunnyside Park Utilities severed the sewer connection to the building Printcraft is occupying.

28. On December 19, 2006, Printcraft caused its portable, non-discharging above ground sewer system, with a capacity of 1,000 gallons, to overload, allowing sewage to pond on the ground near Printcraft's building. Multiple additional overloads have occurred and are continuing.

29. On December 20, 2006, the Department of Environmental Quality conducted an investigation of the sewage on the ground and

determined that "Odor of wastewater smelled like ink. Color of wastewater was a dark blue to black color." A copy of the investigation letter dated January 5, 2007 is attached as Exhibit "1."

30. The investigation by the Department of Environmental Quality, only five days after Sunnyside Park Utilities severed the sewer connection, confirms that Printcraft was discharging "processed wastes."

31. During November, 2007 and April, 2008, and at various other times, Travis Waters and Printcraft's agents, Lance Schuster, Travis Waters and Robert Starr, entered onto property owned by Sunnyside Park Utilities.

32. Sunnyside Park Utilities did not give authorization for Travis Waters, Lance Schuster, Robert Starr, or any other agent of Printcraft or Travis Waters to enter onto Sunnyside Park Utilities' property, and Sunnyside Park Utilities had placed "No Trespassing" signs not less than every 660 feet on the border of the property.

COUNT I: BREACH OF CONTRACT

33. Defendant re-alleges paragraphs 1 through 32 by reference.

34. Defendant and Plaintiff entered into a binding contractual relationship as follows:

a. On September 6, 2006, Defendant informed Plaintiff that Defendant's sewer system had capacity only to collect and dispose of "human waste" and that no other wastes would be allowed into the system.

b. On September 19, 2006, Plaintiff requested a copy of any contracts, agreements, documents, or the like, which were applicable to parties receiving sewer services from Sunnyside Park Utilities.

c. On September 20, 2006, Defendant provided Plaintiff with Defendant's Third Party Beneficiary Utility Agreement and Defendant's Rules and Regulations for sewer service. Such Rules and Regulations specifically define "sewage" as blackwaste or blackwater (also known as "human wastes") and specifically excludes a lengthy list of "processed wastes" from being discharged into the sewer system.

d. On September 20, 2006 Sunnyside Park Utilities offered to continue accepting human sewage from Printcraft, only if Printcraft would agree to cease discharging any "processed wastes" into the system. Sunnyside Park Utilities specifically identified substances and flows which it classified to be "processed wastes."

e. On or about September 26, 2006, Plaintiff agreed to abide by the September 20, 2006 offer and agreed not to discharge any substance Sunnyside Park Utilities classified as "processed waste" into Sunnyside Park Utilities' sewer system.

f. After September 26, 2006 Defendant accepted Plaintiff's human sewage discharges in exchange for Plaintiff's payment of the monthly sewer service fee of \$17.50.

35. Defendant substantially performed its obligations under

the contract from September 26, 2006 until December 15, 2006 and did not materially breach the contract.

36. Plaintiff materially breached the contract by discharging water softener brine, hazardous chemicals, substances that are harmful to Defendant's sewer facilities, inks, and excessive flow of discharges.

37. As a direct result of the acts of Plaintiff, Defendant was required to disconnect the building occupied by Plaintiff from the sewer system on December 15, 2006. The costs of such disconnection included \$1,228.64 for a backhoe and operator to perform the disconnection and \$1,420.00 for inspection and supervision by the Defendant.

38. As a direct and proximate result of the breaches of contract by Plaintiff, Defendant is entitled to damages of \$2,648.64 or such other amount as may be proven at trial.

39. In accordance with IRCP 54, Idaho Code §12-120, 12-121, 12-123, IRCP 11(a)(1), and the Sewer Rules and Regulations, Article IV, Section 2, Sunnyside Park Utilities is entitled to reimbursement of all attorney fees, expenses, and losses incurred herein in prosecution of Sunnyside Park Utilities' counterclaims.

COUNT II. COVENANT OF GOOD FAITH AND FAIR DEALING

40. Sunnyside Park Utilities re-alleges paragraphs 1 through 39 by reference.

41. The contract between these parties includes material implied covenants.

42. Implied in every contract is a covenant that the parties will act in good faith and fair dealing with each other

with respect to the terms of the contract.

43. Printcraft has failed to deal fairly with and act in good faith towards Sunnyside Park Utilities and has breached the implied covenant of good faith and fair dealing.

44. Printcraft's breach of the implied covenant of good faith and fair dealing has unfairly frustrated Sunnyside Park Utilities' right to receive the benefits of the contract.

45. Printcraft's breach of the implied covenant of good faith and fair dealing is a material breach of the contract and is the direct and proximate cause of damages suffered by Sunnyside Park Utilities, which damages are continuing, including attorney fees incurred by Sunnyside Park Utilities to litigate disputes with Idaho Department of Environmental Quality and Eastern Idaho Public Health Department.

46. Sunnyside Park Utilities has suffered damages and will hereafter suffer damages in an amount to be proven at trial in excess of the jurisdictional amount of this Court.

COUNT III. TRESPASS

47. Sunnyside Park Utilities re-alleges paragraphs 1 through 46 by reference.

48. Travis Waters, personally, and Printcraft, through its agents, Travis Waters, Lance Schuster and Robert Starr went upon Sunnyside Park Utilities' property during November, 2007, April, 2008 and at various other times to be proven at trial, for the purpose of gathering evidence to support the claims of Printcraft herein .

49. Sunnyside Park Utilities did not consent to Travis

Waters' or Printcraft's entry upon Sunnyside Park Utilities' property at any time.

50. Sunnyside Park Utilities' property, at the time of each entry upon the property by Travis Waters and Printcraft's agents, was posted with "No Trespassing" signs, spaced at intervals of not less than one (1) notice per six hundred sixty (660) feet along such real property.

51. Sunnyside Park Utilities has been damaged in an amount to be proven at trial.

52. Sunnyside Park Utilities is entitled to treble the amount of damages which may be assessed, or fifty dollars (\$50.00), whichever is greater, under Idaho Code §6-202.

53. Sunnyside Park Utilities is entitled to a reasonable attorney's fee, which shall be taxed as costs, pursuant to Idaho Code §6-202.

COUNT IV. FRAUD

54. Sunnyside Park Utilities re-alleges paragraphs 1 through 53 by reference.

55. Printcraft Press, through its Director, Travis Waters stated that the disposal needs of the building Printcraft intended to occupy, was capacity for disposal of human waste generated by thirty (30) employees.

56. Such statement was false as Printcraft Press's sewage needs included capacity for disposal of waste generated by in excess of forty (40) employees, reverse osmosis water totaling several thousand gallons of waste per day, water softener brine, inks, diluted chemicals, air conditioner water, and other

hazardous wastes.

57. Such statement was material because had Sunnyside Park Utilities known the truth of the matter, it would never have allowed Printcraft to discharge any substances into the sewer system, because Sunnyside Park Utilities would have known that the discharges coming from Printcraft would cause the system to fail or overload, and would subject Sunnyside Park Utilities to criminal penalties.

58. Printcraft Press and Travis Waters knew the statement was false as Travis Waters was familiar with the printing industry, Travis Waters had owned and operated a printing business for several years, Travis Waters had in his possession Material Safety Data Sheets provided by the suppliers of chemicals, inks, and hazardous substances, Travis Waters knew the specific operations of Printcraft, and Travis Waters was familiar with the design of the building, the future location of the printing equipment in the building, the types of discharges that could be expected from each piece of printing equipment, water softener equipment, and reverse osmosis equipment in the building, and the substances and quantities that Printcraft customarily discharged directly into sinks and drains without any pre-treatment.

59. Sunnyside Park Utilities did not know that the statement was false, as the only other information it had been provided by Printcraft through Travis Waters were the building plans which stated the word "Printcraft," and showed only toilets and bathroom sinks. The plans did not designate any of the equipment Printcraft planned to use and did not designate some of

the sinks or drains that Printcraft intended to discharge chemicals, inks, and other substances into. The plans did not indicate that Printcraft intended to use a reverse osmosis system, a water softener system, or air conditioning units which would discharge into the sewage system.

60. Printcraft Press and Travis Waters intended Sunnyside Park Utilities to rely upon the statement because then Printcraft Press would only have to pay \$17.50 per month in order to receive sewer services. If Printcraft Press had not misrepresented its sewage needs to Sunnyside Park Utilities, Printcraft Press would have been forced to develop its own sewer system, at significant cost, or otherwise dispose of its waste flows.

61. Sunnyside Park Utilities did rely upon the statement and allowed the connection of the building to occur and provided the building with sewer services until December 15, 2006.

62. Sunnyside Park Utilities' reliance was reasonable under all of the circumstances because Sunnyside Park Utilities asked Printcraft and Travis Waters to identify Printcraft's disposal needs, and Sunnyside Park Utilities reasonably expected Printcraft and Travis Waters to truthfully disclose what such disposal needs would be.

63. Sunnyside Park Utilities suffered damages proximately caused by reliance on the false statement, including failure of the system, litigation between Sunnyside Park Utilities the Department of Environmental Quality and District Seven Health Department and costs to expand the sewer system, both now and in the future.

64. Sunnyside Park Utilities has suffered damages in an amount to be proven at trial.

COUNT V. FRAUDULENT NONDISCLOSURE

65. Sunnyside Park Utilities re-alleges paragraphs 1 through 64 by reference.

66. Printcraft Press and Travis Waters failed to disclose the substances, chemicals, inks, and flows that Printcraft Press intended to discharge into the system, prior to any discharge of such substances into the system.

67. Printcraft Press and Travis Waters were aware of, and specifically knew about the substances and flows Printcraft Press intended to discharge into Sunnyside Park Utilities' septic system. In failing to disclose this information to Sunnyside Park Utilities, Printcraft Press and Travis Waters are to be treated as if they had represented that none of the substances would be discharged into the septic system, other than the human waste of 30 employees.

68. In failing to disclose to Sunnyside Park Utilities the substances and flows that would be discharged by Printcraft Press, both Printcraft Press and Travis Waters are chargeable with the falsity of that statement.

69. The information regarding the substances and flows Printcraft Press would discharge into Sunnyside Park Utilities' septic system was material in that Sunnyside Park Utilities' was not given the opportunity to determine whether it in fact wanted to proceed with accepting Printcraft Press's sewage, when such sewage would cause the septic system to fail and subject Sunnyside

Park Utilities to criminal sanctions.

70. Printcraft Press and Travis Waters were aware of the fraudulent nondisclosure and knew that Sunnyside Park Utilities would have no way of discovering the true nature of Printcraft Press's discharges without disclosure.

71. Sunnyside Park Utilities was ignorant of, and had no way of knowing, the types and quantities of discharges coming from Printcraft Press until after Printcraft Press had caused the septic system to overload.

72. Sunnyside Park Utilities relied upon the nondisclosure of the substances and flows Printcraft was discharging into the system, by allowing Printcraft to discharge its sewage into Sunnyside Park Utilities' septic system until December 15, 2006.

73. Sunnyside Park Utilities was justified in relying upon the nondisclosures by Printcraft and Travis Waters because Sunnyside Park Utilities specifically asked Travis Waters to identify the disposal needs for the building and Printcraft, and Sunnyside Park Utilities relied upon Travis Waters to make a truthful and full disclosure of what the building's and Printcraft's disposal needs would be.

74. All of the damages and issues that have arisen as a result of the overflow in June 2006, are a result of Printcraft Press's and Travis Waters' fraudulent nondisclosure to Sunnyside Park Utilities regarding the substances that Printcraft intended to discharge into the septic system. Had Sunnyside Park Utilities known of the substances and flows that Printcraft intended to discharge into the septic system, it never would have allowed

Printcraft to discharge anything into the septic system. All of the damages set forth herein would have been avoided if Sunnyside Park Utilities had been told by Printcraft Press and Travis Waters the true nature of Printcraft's disposal needs.

COUNT VI. NUISANCE ABATEMENT

75. Sunnyside Park Utilities re-alleges paragraphs 1 through 74 by reference.

76. On or about December 15, 2006, Printcraft Press began discharging its human sewage and industrial process wastewater into one or more above ground containers, in a location that is easily visible to the general public, located on the county right of way, and within a few feet of a public roadway in the Sunnyside Industrial and Professional Park subdivision.

77. From December 15, 2006 to the present, Printcraft has added additional above ground containers, and now Printcraft discharges its sewage into three above ground containers, located on a trailer, which was parked in the county right-of-way and directly above Sunnyside Park Utilities' water lines, water meter, and water valve.

78. From December 15, 2006 to the present, Printcraft has caused or allowed the above ground containers to overflow on multiple occasions causing raw sewage to pond on the ground, visible to the general public and easily accessible to the general public, animals, insects, etc.

79. In September of 2007, Printcraft caused or allowed the above ground containers to overflow causing raw sewage to flow directly into Sunnyside Park Utilities' man-hole which contains a

water meter and water lines owned by Sunnyside Park Utilities.

80. Eastern Idaho Public Health District asked Printcraft to move the tanks to an alternative location so that contamination of Sunnyside Park Utilities water system would not occur. Printcraft moved the tanks for a short time, but then moved the sewage tanks so that they sat directly above Sunnyside Park Utilities' property and restrict Sunnyside Park Utilities' ability to access its own property which is located entirely within an easement granted to Sunnyside Park Utilities.

81. The raw sewage ponding on the ground is injurious to health, is offensive to the senses, and obstructs Sunnyside Park Utilities' free use of Sunnyside Park Utilities' property, so as to interfere with Sunnyside Park Utilities' comfortable enjoyment of its property.

82. Thousands of gallons of raw sewage sat directly above Sunnyside Park Utilities' water meter and water valve. The raw sewage is frequently allowed to leak, which constitutes a direct and severe health threat to Sunnyside Park Utilities' water system. If the water system is contaminated through Printcraft's continuing nuisance, such contamination will irreparably damage each and every customer served by Sunnyside Park Utilities. Printcraft subsequently tore out the water meter, manhole cover, water valve and water spigot, to the damage of Sunnyside Park Utilities in an amount to be proven at trial.

83. Sunnyside Park Utilities is entitled to an order abating the nuisance and enjoining Printcraft from using the above ground storage tanks.

84. Sunnyside Park Utilities is entitled to damages in an amount to be proven at trial.

PUNITIVE DAMAGES

85. Sunnyside Park Utilities re-alleges paragraphs 1 through 84 by reference.

86. The actions of Printcraft and Travis Waters were wanton, malicious and in reckless disregarding of Sunnyside Park Utilities' rights and property.

87. Sunnyside Park Utilities has suffered damages to its rights and property as a result of the conduct of Travis Waters and Printcraft.

88. The wanton, malicious, and reckless actions of Printcraft and Travis Waters continue.

89. Sunnyside Park Utilities is entitled to an award of punitive damages, in an amount to be determined by the jury, to deter Printcraft and Travis Waters from continuing in their wanton, malicious, and reckless behavior.

PRAYER

WHEREFORE, Sunnyside Park Utilities, Inc. respectfully requests the following relief against Printcraft Press, Inc. and Travis Waters:

1. That Printcraft recover nothing by reason of its Third Amended Complaint and that all such claims be dismissed.

2. That Sunnyside Park Utilities be awarded its damages for Printcraft's breach of contract in the amount of \$2,648.64, or such amount as may be proven at trial.

3. That Sunnyside Park Utilities be awarded general and

special damages for Printcraft's breach of the covenant of good faith and fair dealing.

4. That Sunnyside Park Utilities be awarded treble the amount of damages proven at trial, or \$50.00, whichever is greater, for Printcraft's and Travis Waters' trespass onto Sunnyside Park Utilities' property on multiple occasions.

5. That Sunnyside Park Utilities be awarded general and special damages against Printcraft Press and Travis Waters for Travis Waters' fraudulent conduct.

6. That Sunnyside Park Utilities be awarded general and special damages against Printcraft Press and Travis Waters for Printcraft's and Travis Waters' fraudulent nondisclosure of the substances and flows Printcraft would discharge into Sunnyside Park Utilities' septic system.

7. That the Court order Printcraft to abate the nuisance created by Printcraft's use and improper maintenance of the above ground tanks and be enjoined from all future use of such above ground tanks.

8. That Sunnyside Park Utilities be awarded its damages for the nuisance caused by Printcraft's use and improper maintenance of the above ground tanks.

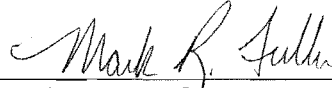
9. That Sunnyside Park Utilities be awarded punitive damages, against Printcraft and Travis Waters in an amount to be determined by the jury.

10. That Sunnyside Park Utilities be awarded all of its costs and attorney fees.

11. For such other relief, legal or equitable, to which

Sunnyside Park Utilities has any right or entitlement.

DATED this 15th day of January, 2009.



Mark R. Fuller
Attorney for Defendant

DEMAND FOR JURY TRIAL

Sunnyside Park Utilities hereby demands a trial by a twelve
(12) person jury on all issues of fact.

DATED this 15th day of January, 2009.



Mark R. Fuller
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the attorneys listed below on this 15th day of January, 2009:

Document Served:

SUNNYSIDE PARK UTILITIES' ANSWER
TO THIRD AMENDED COMPLAINT,
AMENDED COUNTERCLAIMS, PRAYER FOR
PUNITIVE DAMAGES AGAINST
PRINTCRAFT PRESS AND TRAVIS
WATERS AND DEMAND FOR JURY TRIAL

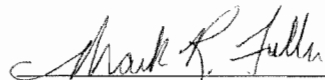
Attorneys Served:

Michael D. Gaffney, Esq.
BEARD ST. CLAIR
2105 Coronado Street
Idaho Falls, ID 83404

_____ U.S. Mail
_____ Facsimile
_____ ☒ Hand Delivery

Bryan D. Smith, Esq.
SMITH DRISCOLL & ASSOCIATES
P.O. Box 50731
Idaho Falls, ID 83405

_____ U.S. Mail
_____ Facsimile
_____ ☒ Hand Delivery



Mark R. Fuller
FULLER & CARR



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

RECEIVED

JAN - 8 2007

Office of the Attorney General
IDEQ

800 NORTH SKYLARK DRIVE, SUITE B • IDAHO FALLS, IDAHO 83402 • (208) 528-2650

JAMES E. RICH, GOVERNOR
TONI HANDELY, DIRECTOR

January 5, 2007

Travis Waters
Print Craft Press
3834 S. Professional Way
Idaho Falls, ID 83402

Open Sewage Complaint Investigation

Dear Mr. Waters:

On December 20, 2006, District Seven Health Department referred an open sewage complaint to DEQ. The complaint received by the District Seven Health Department on December 19, 2006 at 4:10 pm consisted of a large tank leaking sewage onto the ground in front of the Printcraft Press facility located in Sunnyside Industrial Park.

Charlie Mazzone and Greg Eager of DEQ arrived at Print Craft Press (3834 S. Professional Way, Idaho Falls), site of the open sewage complaint, at 10:30 am. DEQ met with Terry Luzier of Printcraft. An investigation was conducted by DEQ in accordance with DEQ's Open Sewage Complaint Investigation Protocol. A copy of the protocol was provided to Mr. Luzier. The investigation revealed Printcraft's sewer connection was disconnected from Sunnyside Industrial Park's collection system. Printcraft's sewer line was fitted with a sump pump discharging to a 1000 gallon plastic tank. There was wastewater on the ground below the tank outlet from leakage of the plastic pipe fittings. Rough estimated volume of spill appeared to be 1-2 gallons of frozen wastewater. Mr. Luzier said wastewater contained employee waste and printing wastewater. Odor of wastewater smelled like ink. Color of wastewater was a dark blue to black color.

DEQ requested that frozen wastewater spill and soil be excavated and disposed of properly. DEQ recommended plastic pipe fitting be sealed. DEQ suggested a containment vessel be placed under the outlet pipe to catch any leakage. While Printcraft resolves the sewer connection issue with Sunnyside Park Utilities, DEQ stated the volumes in the tank need management and periodic pumping to prevent further discharge to the ground. Mr. Luzier concurred with the recommendations and would have an employee immediately address the issues. He would contact a licensed pumper to collect and truck the wastewater to the Idaho Falls Wastewater Treatment Plant. These temporary measures should mitigate the public health hazard of open sewage.

DEQ collected samples for coliform density, TSS and BOD analyses. On December 28, 2006 Energy Laboratories reported the following results:

01-11

EXHIBIT

1515

0000030

36427



TSS 57 mg/l
E. coliform > 1400 mpn/100ml
-BOD Laboratory had a QA/QC error and was not able to run the samples.

Due to laboratory error, Charlie Mazzone collected another wastewater sample from the tank on December 28, 2006. He noted a container had been placed under the outlet leak and contained some frozen wastewater and the ground had been cleaned up from the previous wastewater spill.

On January 4, 2007 Energy Laboratories reported the following results:

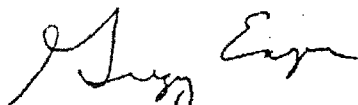
TSS 100 mg/l
E. coliform 3724 mpn/100ml
BOD 260 mg/l

The laboratory analyses reports indicate the wastewater has the biological and physical characteristics of domestic sewage. Table 4-3 of USEPA 1980 Design Manual is attached and shows domestic wastewater characteristics.

DEQ did not attempt to characterize the non-domestic characteristics of Printcraft's wastewater. DEQ requests the material safety data sheets of solutions used in Printcraft's operation be submitted to this office.

If you have any questions in regard to this letter, please call me at (208) 528-2650.

Sincerely,



Gregory Eager, PE
Regional Manager Engineering
Idaho Falls Region

Attachments

C: James Johnston, Regional Administrator
Willie Teuscher, DEQ
Barry Burnell, DEQ State Office
AJ Maupin, DEQ State Office
Stephanie Ebright, AG Office
D7HD, Environmental Health

0000831
1 0310

Table 08. DOMESTIC WASTEWATER CHARACTERISTICS

Parameter	Mass Loading gms/cap/day	Concentration mg/l
Total Solids	115-170	680-1000
Volatile Solids	65-85	380-500
Suspended Solids	35-50	200-290
Vol. Suspended Solids	25-40	150-240
BOD ₅	35-50	200-290
Chemical Oxygen Demand	115-125	680-730
Total Nitrogen	6-17	35-100
Ammonia	1-3	6-18
NO ₂ and NO ₃	<1	<1
Total Phosphorus	3-5	18-29
Phosphate	1-4	6-24
Total Coliforms ^a	-	10 ¹⁰ - 10 ¹²
Fecal Coliforms ^a	-	10 ⁸ - 10 ¹⁰
Oil and Grease ^b	-	16-45

(USEPA, 1980 Design Manual: Onsite Wastewater Treatment and Disposal Systems, Table 4-3 page 56) For typical residential dwellings equipped with standard water-using fixtures and appliances (excluding garbage disposals) generating approximately 45 gpcd (170 lpcd). Based on the results presented in USEPA 1980, references.

^a Concentrations presented in organisms per liter.

^b Siegrist, R.L., D.L. Anderson and J.C. Converse. 1984. Commercial wastewater on-site treatment and disposal. On-site Wastewater Treatment, Proceedings of the 4th National Symposium on Individual and Small Community Sewage Systems. ASAE, St. Joseph, MI, pp 210-229. (Average septic tank effluent fats, oils and grease was 38 mg/l.)